

AN GARDA SÍOCHÁNA



**GARDA SÍOCHÁNA POLICY
ON THE INVESTIGATION OF
SEXUAL CRIME
CRIMES AGAINST CHILDREN
CHILD WELFARE**

2nd Edition

2013

POLICY STATEMENTS

An Garda Síochána is fully committed to the fundamental principle of protecting the Human Rights of all those with whom it interfaces in everyday policing. This document represents the Garda Commissioner's policy in respect of the investigation by members of An Garda Síochána of sexual crime and crimes against children. The Commissioner's policy in relation to sexual crimes against persons with intellectual disability is also outlined herein. It complies with domestic law, including the principles of the European Convention on Human Rights which is incorporated into Irish law and the Constitution of Ireland.

It is the aim of An Garda Síochána to uphold and protect the human rights of all the people of Ireland by providing a high quality, effective policing service in partnership with the community and in co-operation with other agencies.

The fundamental principle underpinning this policy is the protection of the public by the thorough and professional investigation of this form of crime by all members of the organisation.

Every member of the community has a role in the protection of children. In that context An Garda Síochána would urge all individuals and organisations with responsibility for children the importance of being aware of child protection measures and being alert to signs of abuse. While An Garda Síochána has significant expertise and experience in the investigation of sexual offences and crimes against children, we can only deploy those skills and resources when we are made aware of the need for investigation. To that end, where abuse is identified or suspected, people must report it to An Garda Síochána.

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PART I

THE INVESTIGATION OF SEXUAL CRIME

PART I – THE INVESTIGATION OF SEXUAL CRIME

1. Introduction

- 1.1. This policy document outlines the procedures that Garda members will adhere to when investigating crimes of a sexual nature and suspected child abuse. It incorporates information on Garda standards, procedures and legislation through to victim support in regard to such incidents.

- 1.2. Sexual Crime includes rape, rape under Section 4 of the Criminal Law (Rape) (Amendment) Act 1990; aggravated sexual assault; sexual assault; defilement of a child; the production, distribution and possession of child pornography; sexual exploitation of a child; child trafficking and taking a child for purposes of sexual exploitation; soliciting, importuning or meeting a child for the purpose of sexual exploitation; incest; indecent exposure; and attempts to commit any of the foregoing offences. [See Appendix B](#)

The above definition is provided for guidance but should not be interpreted as being fully exhaustive.

- 1.3. Sexual crime may be committed by male and female adults and children aged 10 years or more. In the case of a child under 14 years of age, who is charged with an offence, no further prosecutions may take place without the consent of the Director of Public Prosecutions. It is not necessary that such offences are committed by strangers but it is often more common that they are committed by persons known to the victim, including family members, friends, associates, partners and persons in authority. Children can be particularly vulnerable to such crime and the protection and future welfare of children is of paramount importance in the work of An Garda Síochána.

- 1.4. Sexual crime may occur within heterosexual, lesbian, homosexual, bisexual and transgender relationships. It crosses class, gender, race and religious belief.

- 1.5. The locus in quo is often in private areas to which members of An Garda Síochána have no right of access without statutory powers.

- 1.6. There are occasions in this document where the term ‘victims’ has been used when deemed more appropriate than the term ‘complainants’ but both terms should be

seen as interchangeable to meet context.

- 1.7. It is the duty of the Gardaí to investigate fully all incidents of sexual crime and child abuse reported to them. These cases require special care and attention because of the usually vulnerable circumstances surrounding the injured party. Because of this, she/he will very often not be able to make the kind of rational decisions which would be in her/his best interests.
- 1.8. Inadequate action by Gardaí during the course of such investigations can often confirm the aggressor's perception of invulnerability which in turn can lead to further crime and/or leave the complainant vulnerable to further attack.
- 1.9. The positive and considerate attitude of members of An Garda Síochána during the course of investigation of such crime is vital to ensuring that the investigation is brought to a successful conclusion. Inappropriate body language, remarks and a failure to show sensitivity and compassion to a victim can and has resulted in the withdrawal of genuine complaints.
- 1.10. Under no circumstances should members dissuade complainants from maintaining their complaints. Members should explain what is involved in the investigation and trial process but this should be conducted in as positive and as clear a manner as possible.
- 1.11. Each District Officer will take personal responsibility for the implementation of the policy contained in this document. Each Divisional Officer will nominate an Inspector to oversee the policy and evaluate its effectiveness within her/his Division.
- 1.12. The fundamental principle underpinning this policy is that any action by a member of An Garda Síochána must comply with the fundamental Human Rights principles of legality, necessity, proportionality and accountability and must be applied in a non-discriminatory manner.

The primary Garda role is one of 'protection of rights' through **law enforcement** and in particular the rights outlined under the European Convention on Human Rights (ECHR), especially:

- [Article 2 – Right to Life](#)

- Article 3 – Right to prohibition from inhuman & degrading treatment
- Article 5 – Right to liberty and security of person,
- Article 6 – Right to a fair trial
- Article 8 – Right to respect for the private and family life.

The unenumerated [Constitutional](#) rights to bodily integrity and dignity must also be vindicated by the State.

The Legal Basis for the grounding of this policy and its implementation can be found at [Appendix A](#).

2. Procedure

2.1. Reports of crimes of a sexual nature and suspected child abuse will be investigated promptly. Investigations will be conducted under the supervision of the District Officer or a Senior Investigating Officer (SIO) by a member(s) experienced in the investigation of such crimes.

2.2. Initial Action

2.2.1. A victim of rape or sexual assault may feel embarrassed at being asked to relate the details of the incident(s) and may be suffering from post traumatic stress.

2.2.2. The investigating members must understand that the existence of these factors could affect the victim's ability to answer effectively questions relating to the crime. The attitude of the interviewers should always be one of sympathy and understanding; however, the importance of obtaining a full and consistent statement must be pointed out to the complainant.

2.2.3. To this end, the first member to respond and investigating members will take note of the following:

- Time and date of complaint
- Full particulars of the complaint
- The general state of the complainant - signs of mental shock or distress, state of hair, etc.
- Any evidence of injury or marks, intoxication or drugs
- The state of clothing - torn or disarranged; buttons or jewellery missing; stains of mud, earth, blood or semen on clothing
- Detailed description of the scene
- The member dealing with the complainant should not have physical contact with any suspect prior to forensic samples, clothing and so on (other items) being taken from the complainant or suspect for fear of cross contamination of vital forensic evidence
- Where refreshments have been requested members should be mindful of the fact that evidence could be lost from the mouth or surrounding area.
- If there is a delay in getting to the medical examiner, consider using the Early Evidence Kit. District Officers will ensure the availability of such kits in all stations and ensure that they have not passed their expiry date.

2.2.4. The complainant's statement or video recorded interview (eg in accordance with the provisions of section 16(1)(b) of the Criminal Evidence Act 1992) is the most important evidence in every investigation as it decides the extent of the crime and the gravity of the suspected offence. The fullest and most detailed statement that the complainant is capable of making should always be obtained even if this has to be done over a long period of time or on several occasions. The necessity for such detail should be explained to the complainant in every case.

2.2.5. Complainants should be allowed to give their account of the facts without interruption. At this stage particular notes should be taken regarding the scene of the crime. A full description should also be taken of the perpetrator, if not identified by the complainant, and this description should immediately be circulated as deemed appropriate.

2.2.6. As well as taking note of the above, the investigating member will also take possession of and retain any physical evidence, which could be used to support a prosecution and where appropriate preserve the scene.

2.3. **Medical Attention**

2.3.1. Members should arrange for the provision of immediate medical attention where required and the victim's removal to hospital when deemed necessary and appropriate.

2.4. **Interviewing the Complainant**

2.4.1. The use of **Specialist Interviewers** (Chapters 33 & 34 refer) or **Level III (Advanced) Interviewers** (section 21.4 refers), as appropriate, will always be considered for the interview of complainants of sexual offences. The use of a **Level IV Interview Co-ordinator/Adviser** (see section 21.5 refers) should also be considered.

2.4.2. The interview of the injured party should be conducted by two members at the earliest opportunity and in a suitable location for the complainant and Gardaí. This location may be a suitable room in a Garda Station, the home of the complainant or a friend/relative, a private area in a hospital, a specialist interview suite or other carefully selected location where the injured party feels comfortable. Suspect interview rooms in Garda Stations **should not** be used in this regard. If the interview is to take place in a Garda station, privacy should be ensured.

- 2.4.3. Children under 14 years of age and persons with an intellectual disability who have been the subject of a sexual offence, an offence involving violence or the threat of violence to a person or an offence consisting of attempting or conspiring to commit or of aiding, abetting, counselling, procuring or inciting the commission of any of these offences will be interviewed by trained Specialist Interviewers. Under no circumstances will a member who has not received such training attempt to interview a person who is under 14 years of age or with an intellectual disability regarding a sexual offence or offence involving violence or the threat of violence. Further guidance regarding these matters is provided at section 14.4 and Chapters 33 and 34.
- 2.4.4. The investigating member will at all times display a positive, helpful and non-judgemental attitude.
- 2.4.5. From the beginning, the investigating member will keep in mind the emotional and physical pain the victim may be suffering, while ensuring that all available evidence regarding any reported offence is obtained. Members should be mindful at an early stage of our obligations outlined in *Children First: National Guidance* (2011).
- 2.4.6. Members should use positive language at all times, avoiding negative terminology as ‘alleged’ or ‘allegation’ and instead use such words as ‘complaint’ or ‘account’, etc.
- 2.4.7. There may be occasions where difficult questions must be asked of complainants (eg, regarding delay in making a complaint, or possible inconsistencies in earlier statements). Such issues commonly arise in genuine cases because of the delay in reporting, because the complainant has forgotten to say something, did not realise the significance of a piece of information, or was too embarrassed to mention it previously. Complainants may omit information because they genuinely believe that the information will affect whether or not their stories are believed. Such omissions must then be addressed in order that a complete picture of the events surrounding the complaint is established prior to any proceedings.
- 2.4.8. To reduce the potential of such an occurrence, investigating/interviewing Gardaí must explain to the complainant, in positive language and at an early stage before the making of any statements, the necessity to give a full and frank account of what happened. A detailed record should be made of anything said by the complainant.

- 2.4.9. Where they arise, the necessity to address such omissions or inconsistencies must be explained to the complainant in positive language **before** asking such questions.
- 2.4.10. Complainants of rape or sexual assault should be interviewed as soon as possible after the matter has been reported to An Garda Síochána. A complainant may express a preference to be interviewed by a male or female interviewer. All efforts will be made to facilitate such requests, subject to operational practicalities.
- 2.4.11. It is important that the complainant is not interviewed in the company of any potential witnesses.

2.5. **Scene of Crime**

- 2.5.1. A crime scene includes a scene of a sexual offence which may in some instances be private property. In the investigation of crimes of a sexual nature and suspected child abuse members of An Garda Síochána should be aware of the powers available under [section 5 of the Criminal Justice Act 2006](#) to take such steps reasonably considered necessary to preserve any evidence of, or relating to, the commission of the reported offence until such time as the designation of a crime scene by a Superintendent, which automatically authorises members of An Garda Síochána to search for and collect evidence at the crime scene.

2.6. **Forensic Medical Examination & Possession of Complainant's Clothing**

- 2.6.1. The investigating member will at the earliest opportunity arrange for a medical examination of the complainant to be carried out. The necessity for such an examination should be clearly explained to the complainant and the examination should be carried out by staff attached to a Sexual Assault Treatment Unit or a suitably qualified medical practitioner.
- 2.6.2. This examination will provide the investigating members with the opportunity to obtain the clothing worn at the time and immediately after the incident and each garment should be placed in individual exhibit bags sealed and properly labelled. Gloves should be worn to avoid cross-contamination of evidence.
- 2.6.3. In accordance with section 23 of the Non-Fatal Offences against the Person Act 1997, a child who has attained the age of 16 years may consent to medical treatment and it is not necessary to obtain any consent from the child's parents.

2.7. **Photographic Evidence**

- 2.7.1. Where deemed appropriate, the investigating Garda in consultation the Forensic Examiner (doctor or nurse conducting the forensic examination) and the complainant should make arrangements to have the injuries of the complainant photographed by a member attached to either a Divisional Crime Scene Investigation unit or the Photography Section at An Garda Síochána Technical Bureau, Garda Headquarters, Phoenix Park, Dublin 8.
- 2.7.2. The photographing of the complainants' injuries will occur only with the written consent of the complainant or, where appropriate, that of the complainant's parent/guardian. The implications of photographing such injuries must be explained to the complainant prior to obtaining any consent (i.e. the fact that they may be produced in any subsequent court proceedings and that they may be disclosed to the defence).
- 2.7.3. As with the interviewing members, the gender of the member taking the photographs should be decided by the complainant unless, in the circumstances, this is not practicable.
- 2.7.4. Where a Garda photographer is not available or appropriate, some Sexual Assault Treatment Units may have local arrangements for obtaining photographic evidence. However, where such photographic evidence is deemed necessary, every effort will be made to secure a Garda photographer appropriate to the circumstances of the case.

2.8. **Early Evidence Kits**

- 2.8.1. Early Evidence Kits for the investigation of rape and sexual assaults are available from the Forensic Liaison Office at the Garda Technical Bureau, Garda Headquarters, Phoenix Park, Dublin 8. These allow for the early retrieval of forensic evidence where a complaint of a recent sexual assault has been received and the forensic medical examination is expected to be delayed. The Early Evidence Kits will be used primarily in cases where it is reported/suspected that a sexual assault included penetration of the mouth and/or where toxicological examination may be required (e.g. cases where it is suspected that the modus operandi included the administration of chemical substances (in conjunction with alcohol or otherwise) to the complainant).
- 2.8.2. District Officers will ensure that an adequate supply of the kits is available within their

respective Districts, ensuring the replacement of those that have exceeded their expiry date.

- 2.8.3. Divisional In-Service training personnel will instruct members locally on their use. A copy of the guidelines on the use of such kits is attached at [Appendix D](#).

2.9. **The Use of Drugs in the Commission of Sexual Offences**

- 2.9.1. As mentioned at section 2.8.2 above, there may be occasions where it is suspected that certain drugs, such as Rohypnol or Gammahydroxybutyrate (GHB), have been used by perpetrators, in conjunction with alcohol consumption, to incapacitate victims for the purpose of committing sexual offences upon them.

- 2.9.2. The most important factor in cases of suspected drug facilitated sexual assault is **speed of response**. The sooner the samples are collected, the more likely that a useful forensic toxicological examination can be carried out. If there is any doubt as to whether or not a particular sample should be taken, it should be collected and submitted to the laboratory for evaluation, to establish what analysis is appropriate.

- 2.9.3. Where there is **any suggestion** that the commission of a sexual offence was **facilitated by the administration of a drug** (in conjunction with alcohol or otherwise) and the forensic medical examination is expected to be delayed, an Early Evidence Kit will be used without delay to collect a urine sample.

- 2.9.4. Detective Inspector, Domestic Violence & Sexual Assault Investigation Unit (DVSAIU) will be informed through supervisory channels of any reports of sexual offences where the use of any such drugs:

- is suspected, and/or
- has been positively confirmed by toxicology tests.

2.10. **Suspects**

- 2.10.1. Members' powers of arrest and detention should be utilised as appropriate in respect of offences for which those powers exist and evidence is available to support this course of action.

- 2.10.2. The use of **Level III (Advanced) Interviewers** (section 21.4 refers), as appropriate, will always be considered for the interview of suspects in sexual crime investigations. The use of a **Level IV Interview Co-ordinator/Adviser** (see section 21.5 refers) should also be considered.
- 2.10.3. In the investigation of crimes of a sexual nature and suspected child abuse, members of An Garda Síochána should be aware of the inference provisions available under the [Criminal Justice Act 1984](#) (the 1984 Act) in relation to suspects, and to consider their use where appropriate. In particular, sections 18, 19 and 19A of the 1984 Act (as amended respectively by sections 28, 29 and 30 of the Criminal Justice Act 2007) provide that inferences may be drawn from failure or refusal to:
- account for any object, substance or mark, or any mark on any such object found (S.18);
 - account for his or her presence at a particular place (S.19); or
 - mention any fact when questioned, prior to being charged, or when being charged and which is later relied on in her/his defence in proceedings (S.19A).

2.11. **False Allegations**

- 2.11.1. False allegations of sexual crime are not common. Where members are concerned as to the veracity of any complaint, or any element of the complaint, the complaint will be fully investigated but any such concerns will form part of the investigation and will be outlined in the investigation file submitted to the Director of Public Prosecutions.
- 2.11.2. Members must not display any concerns regarding veracity to the complainant unless **evidence** is available which shows that the complaint is false.
- 2.11.3. Where evidence is available that a complaint is false, members will consider forwarding a file to the Director of Public Prosecutions regarding any disclosed breach of [Section 12 of the Criminal Law Act 1976](#). **Section 5 of the Protections for Persons Reporting Child Abuse Act 1998** also applies in respect of false reports of child abuse.

3. Safety/Barring/Interim Barring/Protection Orders

- 3.1. Where the sexual crime is reported to have been committed by a relative or co-habiting partner of the complainant, members should be mindful of the possibility of the complainant obtaining a Safety Order, Barring Order, Interim Barring Order, and/or Protection Order as appropriate.
- 3.2. Members should consult the [Garda Síochána Policy on Domestic Violence Intervention for guidance](#).

4. Bail

- 4.1. Where the injured party has reason to fear harassment or retaliation, the court should be so informed in order that this fact can be taken into account in any bail application. In any case, where such a ground is advanced as an objection to bail, the Court normally requires the injured party to give evidence to this effect
- 4.2. Where bail is granted and any special conditions are attached, the injured party will be informed of all details and encouraged to inform the investigating member if any of these conditions are being breached. Likewise, where there has been a change in the circumstances of the investigation (e.g., offender is granted bail, bail conditions are changed, etc.), the investigating member should inform the injured party forthwith.
- 4.3. Where a suspect is arrested and charged careful consideration should be given before station bail is granted. Where station bail is not deemed appropriate and the accused is brought to court members will be mindful of the court's powers in relation to the setting of special conditions where appropriate and necessary.
- 4.4. In addition to the O'Callaghan Rules (1966 I.R. 501.) regarding objections to bail, [Section 2 of the Bail Act 1997](#)) applies where an offender is charged with a "serious offence" (which is set out in the Schedule to the 1997 Act (as amended) and attracts a sentence of 5 years imprisonment or more). A Court may refuse a bail application if the Court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.
- 4.5. Members must always be prepared to offer evidence where the Court requires such, rather than submissions, in relation to objections to bail.

5. Reporting & Recording

5.1. All reports of sexual crime must be reported and recorded.

5.2. Reports to District Officer

5.2.1. The member receiving the complaint will submit a report for the information of the District Officer without delay, outlining the nature of the complaint and any action taken to date.

5.2.2. The District Officer's responsibility is to ensure a full, expeditious and professional investigation of the criminal complaint.

5.2.3. To facilitate her/his monitoring of the progress of such investigations in accordance with that responsibility, each District Officer will arrange for the creation of an entry on her/his correspondence register with monthly reminders requesting interim reports from the investigating member.

5.2.4. The District Officer will also ensure that guidance is provided in respect of the investigation and that adequate resources are made available to the investigating member(s).

5.3. Files to the Director of Public Prosecutions

5.3.1. When the matter is investigated, a full investigation file will be prepared by the investigating member. This investigation file will be forwarded to the District Officer for onward transmission to the office of the Director of Public Prosecutions for favour of directions when deemed appropriate and in accordance with the DPP's General Direction No.3

5.3.2. It is the general practice in the vast majority of sexual crime cases that the services of a social worker and/or persons involved in counselling are availed of by victims. All investigation files, when being submitted to the Director of Public Prosecutions, will outline the qualifications of such persons in order to provide a more complete picture of events and assist the Director of Public Prosecutions in reaching a decision.

5.3.3. Where child welfare or protection issues arise during an investigation, the Túsla will be notified in accordance with *Children First National Guidance* (2011) and Part III of this policy document.

- 5.3.4. The Director of Public Prosecutions will be informed in the investigation covering report of all Garda/Túsla Children First notifications made regarding each investigation and the current status of the child protection assessment/investigation being conducted by Túsla.
- 5.3.5. In such circumstances where the complainant is under the age of 18 years when the investigation file is being forwarded to the DPP, the investigating member will invite the Túsla social worker dealing with the case to offer her/his opinion, in writing, as to whether or not a prosecution is in the best interests of the child. The social worker should also be requested to provide in writing, where she/he is of the opinion that a prosecution is not in the best interests of the child, the rationale supporting that opinion. The written opinion will be included in the Garda investigation file forwarded to the Director of Public Prosecutions.
- 5.3.6. ‘Recovered memory’ has been defined as the emergence of an apparent recollection of a significant life event of which the individual has no previous knowledge. The difficulties involved in relying solely on the evidence of ‘recovered memory’ must be borne in mind. Investigation files submitted to the Director of Public Prosecutions will outline all evidence that involves ‘recovered memory’.
- 5.3.7. The Director of Public Prosecutions has stated that, in the context of a decision whether or not to commence any type of criminal proceedings,
- *“the attitude of the victim or the family of a victim...to a prosecution”* and
 - *“the likely effect on the victim or the family of a victim of a decision to prosecute or not to prosecute”*

are two of the many factors to be considered ([Statement of General Guidelines for Prosecutors](#)).

Such issues must be given special consideration, particularly in respect of crimes of a sexual nature and should be addressed in any file/report to the Director of Public Prosecutions.

5.3.8. On occasion, despite the views of the complainant, the public interest may indicate that a criminal prosecution ought to be commenced. This situation can arise where, for example, the suspected offender has made a statement of admission which is believed to be correct or where the complainant is reluctant to proceed as a result of improper or undue influence.

5.3.9. If a prosecution follows from such direction it may be instituted by either arrest or by summons as deemed appropriate and in accordance with law.

5.4. **Statistics provided at Joint Policing Committee Meetings**

5.4.1. Members should also ensure that any statistics referenced do not compromise the obligation of An Garda Síochána to protect complainant anonymity.

5.4.2. Members should remain conscious of the fact that the release of statistics involving such crimes as rape and sexual assault at the level of a District or Sub-District may easily result in the unintentional identification of complainants.

5.4.3. Non-specific information only should be provided relative to such cases.

5.5. **Withholding of Information - Offences Against Children & Vulnerable Persons**

The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 provides for offences of withholding information in relation to specified offences committed against a child or vulnerable person.

5.5.1. A person commits an offence under section 2 of the Act of 2012 who knows or believes that a specified offence (outlined in Schedule 1 of the Act) has been committed against a **child** and who has information which would be of material assistance in securing the apprehension, prosecution or conviction of another person for that offence and fails, without reasonable excuse, to disclose that information as soon as it is practicable to do so to a member of An Garda Síochána.

5.5.2. A person commits an offence under section 3 of the Act of 2012 who knows or believes that a specified offence (outlined in Schedule 2 of the Act) has been committed against a **vulnerable person** (other than a child) and who has information which would be of material assistance in securing the apprehension, prosecution or conviction of another person for that offence and fails, without reasonable excuse, to disclose that information as soon as it is practicable to do so to a member of An

Garda Síochána. See also section 14.5 below.

- 5.5.3. Section 4 of that Act provides for defences to offences under section 2 (Offence of withholding information on certain offences against children) or Section 3 (Offence of withholding information on certain offences against vulnerable persons).
- 5.5.4. Section 4 (I) provides a defence if a child or vulnerable person against whom the offence was committed makes it known that they do not want the offence to be reported to An Garda Síochána. A person accused of an offence under the Act of 2012 must show that he or she knew of and relied upon that view.
- 5.5.5. However, section 4(2), acknowledges that certain victims may not have the capacity to make their views as to disclosure, or otherwise, known. Therefore, a rebuttable presumption that a child under 14 years does not have capacity to form a view as to whether the offence or information relating to it should be disclosed to An Garda Síochána is included. Similarly, a rebuttable presumption as to the lack of capacity of a vulnerable person as defined by paragraph (a) of the definition of ‘vulnerable person’ in section 1(1) is included.

5.6. **Referrals from External Agencies**

- 5.6.1. The instructions outlined in this section **will not** negate An Garda Síochána’s obligations under *Children First National Guidance*, as outlined in Part III of this document. All reports and intelligence received giving rise to child protection and welfare concerns must be notified to Túsla, including uncorroborated rumours regarding the abuse of children.
- 5.6.2. In accordance with guidelines issued by various religious orders and other external agencies, An Garda Síochána is notified of disclosures to those agencies of suspected cases of sexual abuse.
- 5.6.3. The agencies concerned receive such disclosures for various reasons including concerns for the safety of other potential victims, a victim wishing to inform the agency of hurt caused to them in the past by members of those organisations, or in cases where civil actions are being taken.
- 5.6.4. When such disclosures are made persons making the disclosures do not necessarily intend that the matter be referred to An Garda Síochána for investigation and may

also never intend that the matter is made public. It is also the case that such persons may not have disclosed the abuse to close family members or friends.

- 5.6.5. For this reason and for reasons of sensitivity and confidentiality, members **will not** make a direct approach to the person who has made the disclosure, except in cases where there is an immediate and serious risk to the safety and welfare of that person or others. The agency making the report to the Gardaí will be requested in writing by the District Officer to contact the person who made the disclosure and advise that she/he may, at any time, make a complaint to An Garda Síochána with a view to having the matter investigated.
- 5.6.6. Members should note section 5.7 above regarding the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012.
- 5.6.7. To facilitate the making of such a complaint, the referring agency will be requested to provide the person making the disclosure with the contact details of a named Garda nominated by the District Officer.
- 5.6.8. The referring agency will be requested to confirm to An Garda Síochána in writing when the information has been conveyed to the person who made the disclosure.

6. Withdrawal of Complaints

- 6.1. It is not infrequent that a complainant, having made a written statement of complaint regarding a sexual crime, subsequently, for a variety of reasons, withdraws the complaint. In the majority of cases, the complainant is not stating that the conduct complained of did not take place, but merely that she/he does not wish to proceed with the investigation/prosecution. In such cases an additional written statement should be taken from the complainant withdrawing the complaint and stating generally the reason for withdrawal.
- 6.2. In view of the principles set out by the Director of Public Prosecutions in the ‘[Statement of General Guidelines for Prosecutors](#)’, in all cases where a complainant has made a written statement of complaint regarding a crime of a sexual nature and subsequently withdraws the complaint (while still maintaining that the conduct complained of in fact took place) a file/report on the matter should be forwarded to the Director of Public Prosecutions for directions.

- 6.3. Where a complaint is withdrawn, the Director of Public Prosecutions has advised as follows on the question as to whether or not any suspected offender should be interviewed prior to submitting a file/report for directions:

“It is difficult to give a general answer to the question as to whether the suspect should be interviewed, where the complainant withdraws her/his complaint before such interview takes place. Perhaps the Gardaí should postpone any attempt to interview the (suspected offender), where the withdrawal of the complaint is clear and of the complainant’s own free will, until a file is submitted to this office for directions.”

- 6.4. A complainant may subsequently withdraw a complaint and state that the conduct complained of did not in fact take place. Where breaches of [Section 12 of the Criminal Law Act 1976](#) or [Section 5 of the Protections for Persons Reporting Child Abuse Act 1998](#) are disclosed an investigation file will be submitted to the Director of Public Prosecutions.

7. Historical/Delayed Complaints of Sexual Crime

- 7.1. The Director of Public Prosecutions frequently brings prosecutions which relate to complaints of sexual offences which may have occurred some considerable time previously. In many such cases, judicial review proceedings will be taken in the High Court to prevent the prosecution from proceeding to trial on the basis that there has been an undue delay in charging the accused. Those applications are often grounded on allegations of prejudice being caused by delay, (e.g. a witness who may have been available, had the prosecution been brought sooner, has now ceased to be available).
- 7.2. Accordingly, the investigation of such complaints may require that certain difficult questions be asked of the complainant. As earlier stated the reasons for asking such questions and must be explained sensitively and in positive language **before** the inquiries are made.
- 7.3. In order to assist in expediting the processing of such files by the Director of Public Prosecutions (expedition being necessary since time is likely to be of the essence) the following matters should be attended to by the investigating Garda and referred to in the file:

- (a) The complainants should be asked as a matter of routine why they did not

complain earlier to An Garda Síochána. Delay after the age of 18 years should in particular be explained. They should also be asked specifically why the complaint is being made now. This information is necessary in order to consider a defence to any application for judicial review.

- (b) The complainant may have confided in some other person, prior to making a complaint to An Garda Síochána, that he or she was a victim of a sexual crime. In such circumstances the identity of person in whom the complainant previously confided should be established. See section 7.7 (Doctrine of Recent Complaint) below.
- (c) The investigating Garda should explain to the complainant what may be involved in the defence of an application for a judicial review, (e.g., the Director of Public Prosecutions may direct that the complainant undergo psychological evaluation, that he or she may then have to swear an affidavit as part of the Director's opposition to the application and, as a result, may be called upon by the High Court to give evidence under cross-examination).
- (d) In the covering report the investigating Garda should alert the Director of Public Prosecutions as to any known specific prejudice which is likely to be caused to the suspect by reason of lapse of time. In many such cases no person other than the suspect will be aware of the prejudice in question. However, it may be, that in the course of the investigation, the Garda becomes aware of an aspect of prejudice, for example,
 - The death or unavailability of a potential witness, (whether defence orientated or otherwise)
 - The alteration or demolition of buildings or other places in which offences were stated to have been committed or
 - Where some question turns on the accuracy of a witness's recollection of such place, or perhaps the destruction or unavailability of school or institutional records.

7.4. The investigating Garda should explain that the matters at (a) and (b) above are required by law and, accordingly, the fullest response possible is necessary.

7.5. An Garda Síochána does not of course wish to deter persons from proceeding with delayed complaints. However, complainants should be made aware that such

complaints may be subject to legal challenge in the event of a prosecution being instituted, based on the constitutional right of the accused to trial with due expedition. If such a challenge is successful the prosecution cannot proceed to trial.

7.6. As many cases reported to An Garda Síochána are of a historical nature, stretching back over many years and, in some cases, decades members should be mindful of the changes brought about by the introduction of various pieces of legislation which impact on the investigation process. Attached at Appendix C is a brief summary of the legislation relating to historical cases paying particular attention to the powers of An Garda Síochána in relation to the arrest and detention of suspects.

7.7. **Doctrine of Recent Complaint**

7.7.1. As outlined in section 7.3 above, the complainant may have confided in some other person, prior to making a complaint to An Garda Síochána, that he or she was a victim of a sexual crime. In such circumstances the person in whom the complainant previously confided should be interviewed regarding the conversation that he or she had with the complainant at that time.

7.7.2. In general, witnesses may not be asked questions in examination-in-chief referring to former, out-of-court, oral or written statements that are consistent with the evidence being given at trial and might tend to enhance the credibility of that witness. This is known as the ‘rule against narrative’.

7.7.3. An exception to the ‘rule against narrative’ is the ‘doctrine of recent complaint’, which applies only to sexual offences.

7.7.4. The ‘doctrine of recent complaint’ allows previous statements by the complainant to be put in evidence to bolster her/his credibility, provided that those statements satisfy certain conditions. The complaint:

- must be voluntary
- must have been made at the first possible opportunity.

7.7.5. The complaint may be deemed voluntary even if in answer to a question, so long as the question is not a leading one. The relationship between the questioner and the complainant is also of importance. It is the trial judge who decides on such an issue.

- 7.7.6. Whether or not the complaint was made at the first reasonable opportunity is also a matter for the trial judge to decide upon. It has been held that the complaint of an adult rape complainant was deemed inadmissible because she waited one extra day when she had an opportunity to tell her boyfriend on the day following the incident.
- 7.7.7. The complainant must testify before the recent complaint can be admitted. Such complaints are only admissible to show consistency and enhance the credibility of the complainant. If they are not consistent with the testimony of the complainant then they should not be adduced in evidence.
- 7.7.8. Members must bear this rule in mind when interviewing complainants and will ensure that issues relating to whether or not:

- the complaint was voluntary, and
- was made at the first reasonable opportunity

are properly addressed in the statement taken from the complainant during the investigation.

8. Buggery

- 8.1. Buggery was a common law offence with the statutory (maximum) penalty of life imprisonment imposed by section 61 of the Offences Against the Person Act, 1861. The common law offence of Buggery was abolished by section 2 of the Criminal Law (Sexual Offences) Act 1993.
- 8.2. On 8th February 2012 the Supreme Court (DPP v Judge Devins & anor, [2012] IESC 7) held that, when the offence of buggery was repealed by the 1993 Act, there was no saving provision allowing for future prosecutions for any offence of buggery committed prior to 1993.
- 8.3. Accordingly, there can be no prosecutions for the offence of buggery (contrary to common law and section 61 of the Offences Against the Person Act, 1861) and any arrest for that offence would be **unlawful**.
- 8.4. However, the Criminal Law (Rape)(Amendment) Act 1990, created the offence of ‘rape under section 4’, which includes an act that constitutes buggery. Therefore any act that constitutes buggery is an offence known as ‘rape under section 4’ of the 1990

Act and prosecutions may be brought for any such offence committed since 18th January 1991 when the Act of 1990 came into operation.

- 8.5. Furthermore, an act of buggery is also an act of indecent assault, albeit that a conviction for indecent assault would generally involve a lesser penalty. As outlined in Chapter 9 below, the offence of indecent assault is an **arrestable offence** if committed after 6th June 1980, as it attracts a maximum penalty of 10 years imprisonment.

9. Sexual / Indecent Assault and ‘Rape under Section 4’

- 9.1. Many historical complaints of sexual crime occurring prior to 21st January 1991 (the enactment of the Criminal Law (Rape Amendment) Act, 1990) may result in prosecutions for the offence of indecent assault. Indecent assault is a common law offence that, historically, has attracted different statutory penalties for assaults on men or women. The 1990 Act changed the name of the offence to sexual assault and applied the same penalty regardless of the gender of the complainant. Despite the change in name from indecent assault, the offence of sexual assault remains a common law offence with a statutory penalty. The nature of the offence and its ingredients remain unaltered (*S.O’C. v. Governor of Curragh Prison*, Supreme Court [2001] 1 I.R. 66).
- 9.2. Indecent/sexual assault has previously been defined as “a common assault with circumstances of indecency on part of the offender” (*R. v Messenger*, [1867] 4 WW & A’B(L) 253.).
- 9.3. In *S.M v Ireland*, High Court 12 July 2007 (unreported), Laffoy J. outlined the three **ingredients required to prove the offence of indecent/sexual assault**:
- That the accused intentionally assaulted the complainant.
 - That the assault, or the assault and the circumstances accompanying it, are proved to be indecent according to the contemporary standards of right-minded people.
 - That the accused intended to commit the assault in those circumstances of indecency.
- 9.4. Assault at common law is committed where an unlawful force or an impact, however slight, is threatened or perpetrated against another person without that person’s consent. It includes striking at another within range whether or not there is an impact, or using some form of coercion such as pointing a loaded firearm or any other weapon at a person within range. Threatening a person with a view to coercing them into performing some indecent/sexual act may also constitute a sexual or indecent assault.

However, where words alone are used they may not constitute an assault unless accompanied by some overt act or gesture. Any threat must raise in the mind of the victim a fear of immediate and unlawful personal violence.

9.5. As outlined in Section 2 of the Non-Fatal Offences Against the Person Act 1997, no offence is committed where the force or impact, not being intended or likely to cause injury, is in the circumstances such as is generally acceptable in the ordinary conduct of daily life and the defendant does not know or believe that it is in fact unacceptable to the other person.

9.6. **Indecent Assault upon a Male**

9.6.1. Prior to 1981, indecent assault on a female carried a lower maximum sentence than indecent assault on a male. The Offences Against the Person Act 1861, section 62, provided a maximum of ten years penal servitude for indecent assault on a male and section 52 of the 1861 Act permitted a maximum of two years imprisonment for indecent assault on a female. Section 6 of the Criminal Law Amendment Act 1935 raised the penalty for indecent assault on a female to five years in the case of a second or subsequent conviction and section 10 of the Criminal Law (Rape) Act 1981 raised the maximum penalty to 10 years imprisonment for that offence (1st, 2nd or subsequent conviction).

9.6.2. In the case of *S.M v Ireland*, High Court 12 July 2007 (unreported), Laffoy J. found that the penalty provided for in section 62 of the Offences Against the Person Act 1861 was unconstitutional on the basis that it offended against the principle of equality before the law. While the common law offence of indecent assault upon a male still exists, no penalty is now provided for in statute. The Director of Public Prosecutions advises that the penalty would ordinarily be an unlimited penalty at common law, the offence itself being at common law.

9.6.3. However, in a declaration given after the judgement, Laffoy J. said that to ensure equality of treatment a court when imposing a penalty for such an offence must have regard to the penalty for indecent assault on a female in force at the time the indecent assault in the particular case was committed. This effectively put a constitutional cap on the unlimited penalty at common law, which means that the maximum penalty for indecent assault upon a male is the same as that provided for in statute for the offence of indecent assault upon a female.

9.6.4. Prior to 6th June 1981 the penalty for indecent assault upon a female was 2 years for a

first offence and 5 years for a second/subsequent offence. Therefore, on the principle of equality of treatment as set out by Laffoy J., these penalties apply to indecent assault upon a male committed prior to 6th June 1981. The offences of indecent assault upon a male or a female, therefore, are not arrestable or detainable when committed prior to 6th June 1981.

9.6.5. Between 6th June 1981 (Criminal Law (Rape) Act 1981) and 17th January 1991 (Criminal Law (Rape) (Amendment) Act 1990) the penalty for the offence of indecent assault upon a female was 10 years. Therefore (subject to Laffoy J's Constitutional cap) the offence of indecent assault upon a male was also a common law offence with a penalty at common law of 10 years.

9.6.6. The definition of an arrestable offence as outlined in Section 2 of the Criminal law Act 1997 was amended by section 8 of the Criminal Justice Act 2006 so that it now refers to the penalty being fixed "*by any enactment or the common law*". A similar amendment is effected in section 4 of the Criminal Justice Act 1984 by section 9 of the Act of 2006.

9.6.7. Indecent assault upon a male committed after 6th June 1981 is, therefore, an arrestable offence as defined by the Criminal Law Act 1997 and a detainable offence in accordance with the Criminal Justice Act, 1984 by virtue of the commencement of the Criminal Justice Act 2006.

9.7. **Aggravated Sexual Assault and Rape under Section 4**

9.7.1. The offences of Aggravated Sexual Assault (Section 3 of the 1990 Act) and Rape under Section 4 (of the 1990 Act) both consist of sexual assaults with additional ingredients.

9.7.2. Aggravated Sexual Assault involves serious violence or the threat of serious violence, or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted.

9.7.3. Rape under Section 4 involves a sexual assault that includes:

- penetration (however slight) of the anus or mouth by the penis, or
- penetration (however slight) of the vagina by any object held or manipulated by another person.

- 9.7.4. In prosecutions for the offence of Rape under Section 4, where there is penetration of the mouth by the penis, members should be cognisant of the requirement to prove the assault element of the offence – ie an application of force or an impact.
- 9.7.5. The Director of Public Prosecutions has advised that a finger is not an “**object** held or manipulated” and therefore arresting and detaining for the offence of Rape under Section 4 where a sexual assault involved digital penetration is not appropriate.

10. Indecency (Indecent Exposure)

- 10.1. There are four separate offences relating to indecency, commonly known as indecent exposure. The names and sources of the offences, including maximum penalties, are as follows::
- Indecency, contrary to Common Law;
 - Public Indecency, contrary to Section 18 Criminal Law Amendment Act 1935 as amended by Section 18 Criminal Law (Rape)(Amendment) Act 1990 (Penalty: €634.87 or 6 months);
 - Offences against Public Decency within Police District of Dublin Metropolis, contrary to Section 5 Summary Jurisdiction (Ireland) Amendment Act 1871 (Penalty: 2 months)
 - Indecency, contrary to Section 4 Vagrancy Act 1824 as applied and amended by Section 15 Prevention of Crimes Act 1871 and Section 7 Penal Servitude Act 1891 (Penalty: 3 months).
- 10.2. The above-mentioned offences are summary offences and are not arrestable offences as defined by the Criminal Law Act 1997 or detainable offences in accordance with the Criminal Justice Act, 1984.
- 10.2.1. A person convicted of an indecency offence does not become subject to the Sex Offenders Act 2001 (as amended).
- 10.2.2. However, where an act of indecency is intentionally committed in the presence and sight of a child, this may amount to an invitation to the child to observe a sexual, indecent or obscene act, for the purpose of corrupting or depraving the child - the offence known as **sexual exploitation of a child**, contrary to section 3(2) of the Child Trafficking & Pornography Act 1998 (as amended). See Chapter 29 in relation to the sexual exploitation of children.

11. Gross Indecency

- 11.1. 'Gross indecency' is not defined by legislation but is generally taken to mean any sexual act between two or more male persons that does not constitute buggery. Examples include mutual masturbation, inter-crural contact (in which a male places his penis between another male's thighs for sexual gratification) or oral-genital contact.
- 11.2. Gross indecency between men was an offence under Section 11 of the Criminal Law Amendment Act 1885 until it was repealed in by the Criminal Law (Sexual Offences) Act 1993.
- 11.3. The offence of Gross Indecency with males under 17 years of age was created with the enactment of the Act of 1993. It was repealed on 2nd June 2006 by the Criminal Law (Sexual offences) Act 2006. Some elements of gross indecency constitute either sexual assault, 'rape under section 4' or defilement of child. See Part II of this document below in relation to Crimes Against Children. However, any such acts occurring prior to 2nd June 2006 amount to a gross indecency with a male under the age of 17 years, the maximum penalty for which is 2 years imprisonment.
- 11.4. The offences of Gross Indecency with a male person who is "mentally impaired", or soliciting or importuning a male person who is "mentally impaired" contrary to sections 5(2) and 6(2), respectively, of the Act of 1993 still exist (see paragraphs 13.3.3 and 13.3.4 below).

12. Cultural Issues

- 12.1. Ireland has become a multi-cultural society with numerous different communities each presenting different issues and posing differing needs. Some cultures, as a result of experience in other jurisdictions, may have a distrust of the police service and this may deter them from reporting incidents of sexual crime or indeed any other crime. It is important that good relations between An Garda Síochána and ethnic groups are developed and maintained to ensure reporting of incidents and to raise awareness among victims of sexual crime that there is help and support available.
- 12.2. Members investigating crime of a sexual nature should be mindful of issues related to cultural diversity, such as:

- Distrust of police (based mainly on experience in home country);
- Language (possible limited ability to communicate with or understand Garda, or any written material on the topic if only available in English);
- Religious Customs (being separated to be interviewed, male/female Garda issue);
- Cultural practices (forced marriage, dowry related crime and female genital mutilation among others);
- Culture (openness to talk about sexual crime, hand shaking, eye contact);
- Immigration issues (immigration status tied to living with spouse).

12.3. Investigating members should contact the Garda Racial and Intercultural Office within the Community Relations section of An Garda Síochána at Harcourt Square, Dublin 2 should they require advice pertaining to cultural issues when investigating sexual crime incidents.

13. Criminal Justice (Female Genital Mutilation) Act 2012

13.1. The Criminal Justice (Female Genital Mutilation) Act 2012 provides for certain offences in relation to female genital mutilation.

13.2. Section 2 of the Act provides that a person is guilty of an offence if the person does or attempts to do an act of female genital mutilation.

13.3. Section 3 makes it an offence for a person to remove or attempt to remove a woman or girl from the State where one of the purposes of the removal is to have an act of female genital mutilation done to her.

13.4. Section 4 makes it an offence for a person to do or attempt to do an act of female genital mutilation in a place other than the State, but only if it is done or attempted to be done:

- on board an Irish ship within the meaning of section 9 of the Mercantile Marine Act 1955,
- on an aircraft registered in the State, or
- by a person who is a citizen of Ireland or is ordinarily resident in the State, and would constitute an offence in the place in which it is done.

- 13.5. Section 2, 3 and 4 also provide for various exemptions from each respective offence.
- 13.6. A person who is guilty of an offence under section 2, 3 or 4 is liable
- on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, and
 - on conviction on indictment to a fine or imprisonment for a term not exceeding 14 years or to both.
- 13.7. A person who is guilty of an offence under section 2, 3 or 4 is liable
- on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, and
 - on conviction on indictment to a fine or imprisonment for a term not exceeding 14 years or to both.

14. Sexual Crime and Disability

- 14.1. Members responding to sexual crime incidents involving persons with a disability should be mindful of this additional sensitivity and should be conscious that the incident may require interagency intervention (Túsla/NGO's etc).
- 14.2. Garda members will also be aware that disability takes a number of forms, such as:
- Physical (mobility, dexterity);
 - Sensory (vision, hearing, speech);
 - Intellectual (learning, memory);
 - Mental Health (i.e. depression, schizophrenia).

14.3. Sexual Offences Committed against Persons with Intellectual Disability

- 14.3.1. Section 5(5) of the Criminal Law (Sexual Offences) Act 1993 describes persons with an intellectual disability as being “mentally impaired”, which is defined as “suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation.”
- 14.3.2. Any person who has **sexual intercourse or** commits **an act of buggery** with a person who is “mentally impaired” commits an offence contrary to section 5(1) of the Act of 1993 (Maximum Penalty: 10 years imprisonment). Any attempt to commit such an

offence carries the penalty of 3 years for a first offence, or 5 years for any subsequent offence. This is not to be confused with the common law offence of Buggery, which is abolished (see above).

14.3.3. A male person who commits or attempts to commit an act of **gross indecency** with another male person who is “mentally impaired” commits an offence contrary to section 5(2) of the Act of 1993 (Maximum Penalty: 2 years imprisonment). See Chapter 11 above for definition of Gross Indecency.

14.3.4. A person who **solicits or importunes** a person who is “mentally impaired” (whether or not for the purposes of prostitution) for the purposes of the commission of an act that would constitute a **sexual assault** or an offence under section 5 of the Act of 1993 (**sexual intercourse, an act of buggery, or an act of gross indecency**), commits an offence under section 6(2) of the Criminal Law (Sexual Offences) Act 1993 as substituted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007. Solicit means to attempt to obtain, or to seek something through persuasion or earnest requests. Importune means to beg, implore, insist or demand urgently and persistently. The maximum penalty for this offence is 5 years imprisonment.

14.4. **Interviewing Persons with Intellectual Disability**

14.4.1. Section 19 of the Criminal Evidence Act 1992, provides that any reference in section 16(1)(b) of the Criminal Evidence Act 1992 to a person under the age of 14 years includes references to a person with an intellectual disability (described as a ‘mental handicap’ in the Act) who has attained the age of 14 years. This means that a video recording may be made of the interview with a person with an intellectual disability by **Specialist Interviewers** and may be admitted in evidence in accordance with section 16(1)(b) of the Act of 1992, where that person is a complainant in relation to:

- (a) a sexual offence,
- (b) an offence involving violence or the threat of violence to a person,
- (c) an offence under section 3, 4, 5 or 6 of the Child Trafficking and Pornography Act 1998 ,
- (d) an offence under section 2, 4 or 7 of the Criminal Law (Human Trafficking) Act 2008, or
- (e) an offence consisting of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, such an offence.

14.4.2. Only **Specialist Interviewers** should interview complainants with intellectual disability in relation to the above-mentioned offences, whether or not the interview is video recorded in accordance with section 16(1)(b) of the Act of 1992.

14.4.3. The full Garda Policy in relation to interviews conducted pursuant to section 16(1)(b) of the Criminal Evidence Act 1992 and the deployment of **Specialist Interviewers** can be found at Chapters 33 and 34.

14.5. **Withholding of Information on Offences against Vulnerable Persons**

14.5.1. Members should note section 5.7 above regarding section 3 of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. Members should also note the defences provided for in section 4 of that Act.

14.5.2. “vulnerable person” means a person (including, insofar as the offences specified at paragraph 8 of Schedule 2 are concerned, a child aged 17 years old)—

(a) who –

(i) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or

(ii) has an intellectual disability,

which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person, or

(b) who is suffering from an enduring physical impairment or injury which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person or to report such exploitation or abuse to the Garda Síochána or both.

15. Advice and Support to Victims of Sexual Crime

- 15.1. It is important to note that victims of sexual crime vary. All complainants both male and female, irrespective of relationship type, will have their complaint of sexual crime investigated without bias or discrimination.
- 15.2. It is vital both for the victim and the court system that cases are dealt with professionally and that victims are advised of the relevant services available.
- 15.3. Investigating members should be aware that research has shown that a complainant is more likely to make a statement of complaint and remain committed to the investigation and any subsequent prosecution when:
- she/he has been supported by a victims group
 - there is a substantial investigative effort, including the early taking of a detailed statement of complaint
 - she/he has been dealt with in a sympathetic, supportive and compassionate manner, and
 - investigating Garda(í) reassure the complainant that her/his complaint will be fully investigated
 - she/he is kept fully and regularly informed of the progress of the investigation/prosecution.
- 15.4. Any investigation of these offences is particularly demanding of the investigator because of the discretion and tact required. It is vital that members show sensitivity in their dealings with complainants, particularly when a complainant displays behaviour that seems strange or uncharacteristic.
- 15.5. One of the central features evident in incidents of sexual crime is the need for co-ordination of Garda work with that of other relevant services. Liaison with external agencies both locally and nationally is important in furthering our understanding of the issues central to sexual crime.
- 15.6. Where cohabiting couples are involved, the complainant should be informed of the procedure for applying for orders under the Domestic Violence Act 1996.

15.7. It is vital that a continued liaison is maintained with the complainant throughout the investigation and prosecution by the same member of An Garda Síochána. If this is not possible, a formal introduction of the new liaison member will take place and contact details provided. The new nominated member will continue to interact regularly with the complainant.

15.8. Members should be mindful of the provisions of An Garda Síochána Victim's Charter developed by Garda Community Relations Section and comply with same.

15.9. **Crime Victims' Agencies**

15.9.1. The Crime Victims Helpline was launched by the Department of Justice Equality and Law Reform in November 2005. The purpose of the helpline is to provide support and information to victims of crime.

15.9.2. The Helpline service is provided by a team of volunteers under the supervision of the Helpline Co-ordinator and is governed by a Board of Directors to whom the Co-ordinator reports.

15.9.3. Members will refer all victims of crime, with their consent, to a victim of crime agency.

15.9.4. The investigating Garda should make the victim aware of the relevant services in the area, both statutory and voluntary, which may be of assistance to her/him. In all cases of sexual crime, the investigating member will:

(a) Provide the victim with a copy of the relevant sexual crime information literature and make the complainant aware of the relevant services in the area, such as:

- Rape Crisis Centre;
- Women's Aid/Refuge;
- ISPCC
- CARI
- Barnardos
- One In Four
- Towards Healing (previously known as Faoiseamh)
- AMEN (Abused Men);

- Crime Victim's Helpline;
- Túsla Social Workers;
- Safe Ireland (national body for women's frontline domestic violence services);
- Local Women's Support Groups;
- Local GP's;
- Family Law Courts;
- Legal Aid Board;
- Local Housing Authorities;
- Any other agency which may be of assistance.

Information with regard to these services should be updated as required.

These updated lists should be placed close to the phone in the public office of every Garda Station for ease of access. Where literacy issues may arise, information should be explained verbally. Where language is an issue, the information should be provided in a language which the complainant can understand. The nominated Divisional Inspector will have responsibility for ensuring compliance with this direction.

A member of Garda/Sergeant rank will be nominated in each District/Station as a liaison with the relevant non-governmental agencies operating in the area. This member will introduce him/her self as the liaison and provide each organisation with her/his contact details. She/he will support the organisation where possible and familiarise him/herself with the workings and responsibilities of each such organisation.

She/he will compile a detailed dossier outlining the contact details and function(s) of each organisation, which will be available to all members working in the District/Station concerned. The member will ensure that at a very minimum he will call to each organisation once per quarter and maintain a record of her/his ongoing contacts which she/he will make available to the nominated Inspector when requested.

Divisionally appointed Inspectors will ensure that an up-to-date list of contact details for the relevant statutory and non-governmental agencies is maintained in each District/Station as appropriate, and that the nominated

liaison Garda/Sergeant in each District/Station fulfils her/his requirements.

- (b) Give the complainant, in writing, her/his name, station and telephone number (call card).
- (c) Inform the complainant of the literature available issued by the Director of Public Prosecutions regarding ‘[The Role of the DPP](#)’ and ‘[Attending Court as a Witness](#)’.
- (d) Keep the complainant fully and regularly informed of the progress of the investigation/prosecution, provide further information and reassurance on any developments in the investigation.

16. Role of Domestic Violence & Sexual Assault Investigation Unit

16.1. The Domestic Violence and Sexual Assault Investigation Unit (D.V.S.A.I.U.) at the National Bureau of Criminal Investigation is the national unit providing a nucleus of expertise to other Garda units in the investigation of crimes of a sexual nature, including child abuse and exploitation. The unit has a similar brief in relation to domestic violence.

16.2. The D.V.S.A.I.U. also consists of:

- Paedophile Investigation Unit
- Sexual Crime Management Unit
- Sex Offender Management & Intelligence Unit.

16.3. While the investigation of such crime is the responsibility of the local District Officer, the D.V.S.A.I.U. has the following responsibilities:

- Carrying out investigations as directed by Assistant Commissioner National Support Services and Detective Chief Superintendent National Bureau of Criminal Investigation.
- Coordinating and providing assistance in the investigation of sexual crimes which are of a particularly serious, complex and/or sensitive nature.
- Providing assistance in the areas of training and policy implementation
- Promotion of best practice within An Garda Síochána in the investigation

of sexual crime

- Providing advice and assistance to other Garda units.
- Liaison with governmental and non-governmental agencies involved in this area of work
- Acting as a central point of contact for religious orders and Túsla
- Liaison with foreign police organisations via Liaison & Protection Section, Garda Headquarters.

16.4. The Domestic Violence and Sexual Assault Investigation Unit may be contacted as follows:

Address: An Garda Síochána
Domestic Violence & Sexual Assault Investigation Unit
National Bureau of Criminal Investigation
Harcourt Square
Dublin 2

Tel: (01) 6663430

Email: dvsaiu@garda.ie

16.5. **The Paedophile Investigation Unit**

16.5.1. The role of the Paedophile Investigation Unit also includes the following:

- Enforcement of the provisions of the Child Trafficking and Pornography Act, 1998
- Investigation and co-ordination of cases relating to the possession, distribution and production of child pornography, and any related sexual abuse of children
- Proactive investigation of intelligence concerning paedophiles and their use of technology
- The online targeting of suspects for the production, distribution, and possession of child abuse images on the internet.

16.6. **The Sexual Crime Management Unit**

16.6.1. The function of the Sexual Crime Management Unit is to evaluate and monitor, in

conjunction with the investigating member and senior management, a number of investigations each year of clerical child abuse, child neglect and other selected sexual offences. This is designed to ensure that such investigations are receiving the appropriate attention and being brought to a prompt conclusion in accordance with best practice in investigation methodology. Regular updates in relation to these crimes will be sought from District Officers to promote best practice and to assist and advise members in the investigation of such crime.

16.6.2. This Unit has responsibility for:

- maintaining a record of **all** complaints of clerical child abuse brought to the attention of An Garda Síochána. To ensure that this record is accurately maintained Detective Superintendent D.V.S.A.I.U. will be notified of any such complaint(s) received, **immediately** upon receipt of same, on the prescribed form, D.V.S.A. (C.A.). It is not necessary that a statement of complaint has been made before the notification is forwarded.
- Developing and maintaining protocols with the various religious organisations operating in this jurisdiction relating to the reporting and exchange of information regarding incidents of sexual, physical and emotional abuse committed by members or employees (whether voluntary or otherwise) of their organisations.
- Maintaining a record of all sexual crime reported to An Garda Síochána and be in a position to provide senior management with up-to-date statistics in this area
- Monitoring the progress of a selected number of sexual crime investigations each year
- Identifying and disseminating to the Garda organisation areas of best practice
- Providing advice to members of the organisation in relation to best practice in the investigation of sexual crime
- Acting as a central point of contact for other organisations working in the area of sexual crime.

16.7. **The Sex Offender Management & Intelligence Unit**

16.7.1. The Sex Offenders Management & Intelligence Unit has national responsibility for maintaining records of all persons in the State with obligations under the provisions of the [Sex Offenders Act 2001](#) (The 2001 Act). The unit monitors all reported activity

of sex offenders.

- 16.7.2. The unit receives notifications in relation to convicted sex offenders from two sources – the court of conviction and the prison from which she/he is being released.

When a person is convicted of a ‘sexual offence’ as outlined in the schedule of the 2001 Act, a Certificate of Conviction issues from the relevant court to the Sex Offenders Management & Intelligence Unit.

If the convicted offender receives a prison sentence the 2001 Act places an obligation on the Irish Prison Service to notify An Garda Síochána of the forthcoming release of such a prisoner 10 days in advance of such release.

- 16.7.3. The Sex Offenders Management & Intelligence Unit notifies the Divisional Officer in whose area the offender resides, or is expected to reside, who in turn forwards the information to the nominated Divisional Inspector.

Any further information that comes to light in relation to a convicted sex offender is collated at the Sex Offenders Management & Intelligence Unit and the nominated Divisional Inspector is notified through the relevant Divisional Officer.

- 16.7.4. Following receipt of the notification of conviction, a copy of the Garda investigation report is sought by the Sex Offenders Management & Intelligence Unit, which is then filed with the offender’s details.

- 16.7.5. Where a convicted sex offender commits an offence under the 2001 Act, proceedings should be brought without delay by way of arrest, where such a power exists.

- 16.7.6. Where a convicted sex offender commits such an offence and her/his whereabouts are unknown this should be brought to the attention of the Sex Offenders Management & Intelligence Unit and the unit will arrange for the issue and circulation of a Criminal Intelligence Bulletin throughout the State.

- 16.7.7. Where it is believed that a sex offender has left or is leaving the jurisdiction, the appropriate notifications are issued by the Sex Offenders Management & Intelligence Unit through Detective Superintendent, Liaison & Protection.

17. Duties of members relating to the Sex Offenders Act 2001

- 17.1. The role of An Garda Síochána in relation to the obligations of convicted Sex Offenders is clearly outlined in the [Sex Offenders Act 2001](#) .
- 17.2. **It is essential that all members having any interaction with, or information concerning, convicted sex offenders (whether or not currently subject to the 2001 Act) make a detailed report of such interaction or information for the immediate attention of the Sex Offenders Management & Intelligence Unit through the relevant nominated Divisional Inspector.**
- 17.3. Bearing in mind the Data Protection Acts 1988 and 2003 and the advice of the Attorney General, Gardaí are not at liberty to disclose details relating to names, addresses, convictions etc. of convicted sex offenders, except in accordance with *Children First: National Guidance* (2011) and then only on referral to Túsla via the District Officer. Such disclosure may increase the risk of re-offending due to the stress caused to the offender, make the management of that risk more difficult and may cause unnecessary concern to the public. See also the directions outlined at section 38.6 - Persons who Pose a General Risk to Children.
- 17.4. The 2001 Act was signed into law on the 30th of June 2001 and commenced on the 27th of September 2001. Part 2 of the 2001 Act sets out the notification requirements of a person who has obligations under that Act. Within seven days of becoming subject to the notification requirements of Part 2, an Offender must, either by personal attendance at a Garda Síochána station which is a District or Divisional Headquarters, or, by written notice (post) to such a station, notify her/his name, date of birth and home address to An Garda Síochána.
- 17.5. Thereafter an Offender must, within seven days of the event, notify An Garda Síochána of any subsequent changes to her/his name or address and any other address at which she/he spends a qualifying period (defined as seven days or more or two or more periods which taken in any 12 month period amounts to seven days or more).
- 17.6. If an Offender wishes to leave the State for an intended period of seven days or more at a time, she/he must notify An Garda Síochána of that intention, in advance of leaving, and state the address at which she/he is staying outside the State, if known.

Provision is also made for the Offender who leaves the State not intending to remain outside the State for seven days or more who in fact remains outside the State for seven days or more.

17.7. An Offender need not notify at her/his local Garda Station, nor is there any requirement for the Offender to volunteer additional information, e.g. offence details, evidence of identity etc., regardless of whether the Offender opts for the postal notification procedure or calls in person to a Garda Síochána Station.

17.8. [Section 12](#) of the 2001 Act relates to an offence in connection with notification requirements which by virtue of [Section 13 of the Criminal Law \(Human Trafficking\) Act 2008](#) is an **arrestable offence**.

17.9. **Periods for which Persons are subject to Part II of the Sex Offenders Act 2001**

17.9.1. An offender falls subject to the requirements of Part II of the Sex Offenders Act 2001 upon conviction, which is the day that she/he pleads guilty, or is found guilty following trial, in respect of a schedule sexual offence as outlined in the Act.

17.9.2. The periods for which persons are subject to the requirements of Part II of the Sex Offenders Act 2001 are prescribed by section 8 of the Sex Offenders Act 2001 and are imposed automatically in line with the sentence handed down to the offender. Those periods are summarised in the table below:

Length of Sentence	Time Subject to Sex Offenders Act 2001	
	Offender Over 18 Yrs At Time of Sentencing	Offender Under 18 Yrs At Time of Sentencing
More than 2 years	Indefinite	Indefinite
More than 6 months & Less than 2 years	10 years	5 years
6 months or less	7 years	3.5 years
Suspended/Otherwise	5 years	2.5 years

17.9.3. From time to time, persons convicted of sexual offences have been under 18 years at the time of conviction but over 18 years at the time of sentence. As section 2 of the

Sex Offenders Act 2001 provides that ‘sentence’ includes ‘an order postponing sentence’, such persons will be deemed to have been under 18 years at the time of sentence and will be subject to the requirements of the Act for the lesser periods provided for persons under the age of 18 years.

17.9.4. On occasion, a judge, in sentencing a person convicted of a sexual offence, may order that the convicted person is subject to the requirements of Part 2 of the Sex Offenders Act 2001 for a period other than that prescribed by section 8 of the Sex Offenders Act 2001. In such cases, the prosecuting member should bring to the attention of the Judge the periods provided for by statute to which the convicted person is subject under the requirements of Part 2 of the Act of 2001. Those periods are outlined in section 17.9.2 above.

17.9.5. Where the judge declines to amend the order an application may be necessary to the High Court for judicial review. The matter will be reported immediately to the District Officer in whose District the offence occurred, who will consult with the State Solicitor with a view to having the legal implications addressed.

17.9.6. Where the Sex Offender Management & Intelligence Unit becomes aware of an order that is not consistent with the provisions of section 8 of the Sex Offenders Act 2001, the matter will be reported immediately to the Director of Public Prosecutions by Detective Superintendent, Domestic Violence & Sexual Assault Investigation Unit. Copies of that report will be forwarded to the District Officer in whose District the offence occurred and the nominated Divisional Inspector in whose division the convicted persons resides.

17.9.7. An Offender, who is otherwise subject to the notification requirements of Part 2, is not subject to such requirements when she/he is remanded in custody, serving a sentence in prison or on temporary release. See [Section 10 of the 2001 Act](#).

17.10. **Convicted Sex Offenders Seeking Employment**

17.10.1. [Section 26](#) of the Sex Offenders Act 2001 places an obligation on the Offender to inform employers of her/his sexual offence convictions, if a necessary and regular part of the employment consists mainly of unsupervised access to or contact with children or mentally impaired persons. Failure to do so is an **arrestable offence**.

17.11. Sex Offender Orders (Section 16 of the Sex Offenders Act, 2001)

17.11.1. [Section 16](#) of the 2001 Act allows for the obtaining of a Sex Offender Order which shall contain prohibitions on the Offender from doing a thing or things as the Court considers necessary for the purpose of protecting the public from serious harm from the Offender. The Order is obtained on foot of application to the Circuit Court by a member of An Garda Síochána not below the rank of Chief Superintendent and remains in force until the expiration of a period of five years from the date of notification of its making being given to the Offender or such longer period as the Court may provide for in the Order.

17.11.2. Two criteria must be satisfied before an Order can be made. Firstly, the Offender must have been convicted of a qualifying sexual offence **before or after** the enactment of the Sex Offenders Act 2001. Also, the Offender must have acted in such a way as to give the Court reasonable grounds for believing that an Order is necessary to protect the public from serious harm.

17.11.3. Breach of the terms of a Sex Offender Order is an **arrestable offence** pursuant to [Section 22](#) of the 2001 Act.

18. Role of Nominated Divisional Inspector – Sex Offenders.

18.1. A Garda Inspector will be nominated in each Division to oversee the implementation of the 2001 Act (as amended).

18.2. Those Divisional Inspectors will ensure that:

- All sex offenders are aware of the requirements placed on them by the Act and remain fully compliant with the Act;
- Up-to-date information is maintained in respect of each offender;
- Offenders are visited as required;
- Reports are submitted and records updated following such visits;
- The movements of offenders are monitored;
- Returns are made on a regular basis in respect of each offender to the D.V.S.A.I.U.;
- Any changes in appearance, vehicle use/possession, associations and any other relevant information are reported to D.V.S.A.I.U. forthwith;
- Breaches of the Act are fully investigated;

- A report is submitted, where deemed appropriate, to the Divisional Officer recommending that an application be made for a Sex Offender Order in accordance with Section 16 of the 2001 Act.
- Ensuring the assessment and management of the risk posed to the community by convicted sex offenders, as outlined in Chapter 19;
- A report is submitted on the 30th June and 31st December each year for the attention of the Divisional Officer clearly outlining the current status of each offender in the Division. The report will certify that all offenders are compliant with their obligations and that risk management plans are in place in respect of each offender. A copy of these reports will be submitted for the information of Detective Chief Superintendent, National Bureau of Criminal Investigation.

18.3. Each Divisional Officer will ensure that the nominated Divisional Inspector has adequate resources available to comply with her/his obligations as set out at 16.2 above.

19. Managing the Risks Posed by Persons Subject to the Act of 2001.

19.1. Managing the risk posed to the community by convicted sex offenders is an important element of the Garda role in preventing the commission of further sexual crime. Research confirms that higher levels of intervention should be reserved for higher risk offenders and that interventions should focus on factors relevant to the risk of re-offending. In developing its capacity to manage the risk posed by sex offenders to the community, An Garda Síochána has trained members throughout the State in the use of two instruments for the risk assessment of convicted sex offenders – Risk Matrix 2000 (RM2000) and Stable & Acute 2007 (SA07). However, professional judgement remains an important element in managing the risk posed by sex offenders.

19.2. Professional Judgement

19.2.1. Prior to the use of statistically derived risk assessment instruments, members involved in the monitoring/management of sex offenders tended to use professional judgement to gauge the risk posed to the community by each individual offender. The two risk assessment instruments now being used have been found to be substantially more accurate than the use of professional judgement

19.2.2. However, statistically derived instruments will not always be 100% accurate. There may be occasions where an offender has been assessed using RM2000 as posing a

lower risk to the community than members of An Garda Síochána believe is appropriate. In such cases, the offender should be managed at a level higher than that indicated by the RM2000 instrument.

- 19.2.3. Where professional judgement suggests that the risk posed by an offender is higher than that indicated by RM2000, a risk assessment should be carried out using Stable & Acute 2007 by a member trained in the use of Stable & Acute 2007
- 19.2.4. Factors that might ground such professional judgement include, but are not limited to the nature or pattern of offending, the attitude of the offender, or the offender's consistent presence in places that present opportunities for future offending.
- 19.2.5. The fact that professional judgement was used to increase the level of risk at which an offender is managed must be recorded in any plan that is developed to manage the risk posed to the community by that offender. The factors grounding the professional judgement should also be recorded in the management plan.
- 19.2.6. The offender **must never be managed at a lower level** than that indicated by RM2000 or SA07.

19.3. **Risk Matrix 2000 (RM2000)**

- 19.3.1. The RM 2000 is a static risk assessment instrument which enables us to estimate the likelihood that an offender will incur a further conviction over long term periods of 5, 10 and 15 years. It is intended for males aged at least 18 years who have been convicted of a sex offence
- 19.3.2. It distinguishes four levels of risk: low; medium; high and very high. As such it gives a clear indication of the level of management the offender will require.
- 19.3.3. This static assessment is the first important step in a risk assessment process and will be used within An Garda Síochána as a preliminary assessment of the risk posed to the community by convicted sex offenders.
- 19.3.4. If the result of the RM2000 risk assessment is Moderate, High or Very High, an SA2007 assessment should be conducted.

19.4. **Stable & Acute 2007 (SA07)**

19.4.1. The SA 2007 is a more in-depth dynamic risk assessment instrument which facilitates more effective management of offenders. It is also intended for males aged at least 18 years who have been convicted of a sex offence.

19.4.2. It is responsive to individual circumstances and to changes in risk over time.

19.4.3. It contains two parts – Stable 2007 risk assessment and Acute 2007 risk assessment.

19.4.4. The Stable 2007 risk assessment indicates the risk of re-conviction over the following 12 months. It also identifies risk factors which may be amenable to change and therefore provides targets for intervention. Such targets include general self-regulation; sexual self regulation; intimacy deficits; significant social influences and co-operation with supervision. Each assessment will be completed within 12 months of the previous Stable 2007 assessment.

19.4.5. The Acute 2007 assessment gives an indication to the assessing member, on an ongoing basis, of how the client is progressing and when urgent action is required. It should be completed on every occasion that the assessing member meets with the offender.

19.4.6. Members trained in SA07 should be utilised to assess the risk posed by all offenders who have been assessed by RM2000 as posing Moderate, High or Very High risk to the community. Clearly, those offenders presenting with the highest level of risk should be prioritised for the earliest possible SA07 assessment in order that any identified risk factors that might benefit from intervention may be addressed as soon as possible.

19.5. **Resources for Risk Assessment of Convicted Sex Offenders**

19.6. Divisional Officers will ensure that appropriate numbers of members are trained in RM2000 and SA07 to undertake the risk assessment of those persons residing in their Divisions who are subject to the requirements of the Act of 2001.

19.7. Members who are trained in RM2000 and/or SA07 should use only the risk assessment instruments in which they have been trained to conduct risk assessments. Members who have not been trained in the use of those instruments **will not** be engaged in the risk assessment of sex offenders.

19.8. Probation Service

19.8.1. Members will be aware that the Probation Service also has a role in managing the risk posed to the community by convicted sex offenders. The Probation Service personnel also employ the Risk Matrix 2000 and Stable & Acute 2007 risk assessment instruments and may be in a position to share information and provide guidance in relation to those offenders who are subject to Probation Service supervision. Additionally, Probation Service personnel may be in a position to implement certain interventions that may serve to reduce the risk of re-offending.

19.8.2. Members, in particular nominated Divisional Inspectors, should develop strong professional relationships with Probation Service personnel in their respective areas with a view to improving the State's capability in managing the risk posed to the community by sex offenders.

19.9. Túsla, The Child and Family Agency

19.9.1. Túsla also have a role to play in managing the risk posed to children in particular, as outlined *Children First National Guidance* (2011) and Part III of this document. Members should pay particular attention to the directions outlined at below in section 38.6 - Persons who Pose a General Risk to Children.

19.10. Role of Sex Offender Management & Intelligence Unit

19.11. The Sex Offenders Management & Intelligence Unit maintains a record of all persons who are subject to the requirements of the 2001 Act. All relevant information is forwarded to the nominated Divisional Inspector in whose area each offender resides. The Sex Offenders Management & Intelligence Unit can be of assistance in providing an up to date list of such persons if requested.

19.12. When the risk assessment has been completed the **original RM2000 and SA07 forms** will be forwarded **without delay** to the relevant nominated Divisional Inspector. The Divisional Inspector will in turn forward same to Detective Chief Superintendent, National Bureau of Criminal Investigation, who will arrange for the relevant file to be updated and an accurate record maintained of same. The nominated Divisional Inspector and the member conducting the assessment will each retain a copy of the completed RM2000 and the SA07 forms.

19.13. **Role of Nominated Divisional Inspectors**

19.13.1. Divisional Inspectors will ensure that all offenders have been risk assessed using **Risk Matrix 2000 immediately** following each offender's conviction or arrival in to the relevant division. Where an offender is assessed as being of Moderate, High or Very High risk, the Inspector will ensure that a **Stable & Acute 2007** assessment is conducted, giving priority to those offenders in the division who are assessed as posing the highest risk. Where **professional judgement** suggests that an offender poses a higher risk to the community than that indicated by Risk Matrix 2000, an assessment should be conducted using **Stable & Acute 2007**.

19.13.2. The Inspector will put in place a plan aimed at managing the risk posed by such offenders. The plan should reflect the category of risk attached to the offender i.e. Low, Medium, High or Very High. The plan should include, but not be confined to, the following actions:

- Suspects should be visited as deemed appropriate for their level of risk. Visits to such offenders should be made **at least**:
 - Once per month for High and Very High Risk Offenders;
 - Once per quarter for Medium Risk Offenders;
 - Twice per annum for Low Risk.
- Members will ensure that offenders are complying with their obligations under the Act.
- All offender records, will be maintained and updated as appropriate.
- An up-to-date photograph should be obtained from the offender with written consent.
- Any changes to family, lifestyle or social circumstances which cause concern should be noted and acted upon immediately.
- An application for a Sex Offender Order pursuant to Section 16 of the Act should be made when deemed appropriate.
- Members will be mindful of the provisions of *Children First: National Guidance* (2011) at all times.
- Where an offender is subject to post-release supervision by the Probation Service, contact should be maintained with the relevant Probation Service personnel.

19.13.3. Research shows that a high percentage of sex offenders go on to re-offend and members must understand that **Low Risk does not mean No Risk**. The actions outlined above have been introduced for the protection of the public and should not be read as the definitive action which should be taken in every case. Appropriate and proportionate action must be taken for the protection of the public, being mindful of the rights of the offender.

20. ViCLAS (Violent Crime Linkage and Analysis System)

20.1. ViCLAS (Violent Crime Linkage and Analysis System) is an automated computer system, which has been installed at the National Bureau of Criminal Investigation; it is designed to assist police investigators in determining if criminal cases are linked and to help identify the person(s) responsible. The system is designed to link criminal cases through traditional methods e.g. name, physical description, vehicle, time, location, ballistics, DNA and fingerprints and also behavioural themes e.g. rape / child molester typology, presence of a paraphilia (sexual perversion and / or obsession), mental illness and fantasy.

20.2. The ViCLAS System is intended to be of assistance in the investigation of the following types of crimes:

- All solved and unsolved homicides and attempted homicides.
- Solved and unsolved sexual offences.
- Missing persons where the circumstances indicate a strong indication of foul play and the person is still missing.
- All non-parental abductions and attempted abductions.
- Suspicious approaches to children.



PART II

THE INVESTIGATION OF CRIMES AGAINST CHILDREN

PART II – THE INVESTIGATION OF CRIMES AGAINST CHILDREN

21. Introduction

- 21.1. In conjunction with the matters previously raised, members will be mindful of certain obligations and policy provisions relating to child complainants of sexual crime. In relation to the arrest and detention of suspected offenders, members should pay particular attention to the section on the ‘Sexual Exploitation of Children’ below. This part also refers to many other acts of omission or commission against children that may be described as child abuse.
- 21.2. When investigating crimes against children, members will at all times observe Garda policy as set out in Part III of this document and *Children First: National Guidance for the Protection & Welfare of Children* (2011).
- 21.3. It is vital that all instances of child abuse are:
- the subject of a **full criminal investigation**, and
 - **notified to Tusl**.
- 21.4. Members will ensure that the relevant Túsła personnel are regularly kept informed of the progress of Garda investigations being conducted in parallel to any child protection/welfare assessment by Túsła.

22. Child Abduction

- 22.1. Child abduction impacts on An Garda Síochána in both civil and criminal areas. The pertinent legislation is The Child Abduction and Enforcement of Custody Orders Act, 1991 and The Non-Fatal Offences Against the Person Act, 1997
- 22.2. The Child Abduction and Enforcement of Custody Orders Act, 1991 gives effect to The Hague Convention and The Luxembourg Convention. The Conventions contain administrative and judicial measures designed to secure the return of children who are removed (usually by a parent) to a Contracting State in defiance of a Court Order made in another Contracting State or against the wishes of a parent with custody rights. Both Conventions are concerned exclusively with the civil aspects of international child abduction. There is provision in each Contracting State to facilitate the operation of the Convention. The Minister for Justice, Equality & Law Reform through his Department will act as the Central Authority in Ireland for both conventions.

22.3. The primary task of the Central Authority is the transmission of incoming and outgoing applications for the return of children who have been abducted to any Contracting State. Where a parent and child are believed to be in Ireland, the Central Authority makes a request to An Garda Síochána to carry out **discreet** enquiries in relation to the whereabouts of the child, to enable the initiation of appropriate proceedings in the High Court.

22.4. The Central Authority provide a service from Monday to Friday at:

Central Authority for Child Abduction
Department of Justice and Equality
Bishop's Square
Redmond's Hill
Dublin 2

Phone: + 353 1 479-0200

Fax: + 353 1 479-0201

E-mail: child_abduct_inbox@justice.ie (Queries/applications under the 1980 Hague Convention and Council Regulation 2201/2003 (Brussels II bis))

E-mail: internationalchildprotect@justice.ie (Queries/applications under the 1996 Hague Convention)

22.5. Section 37(1), Child Abduction and Enforcement of Custody Orders Act, 1991 provides that a member of An Garda Síochána shall have the power to detain a **child** who he reasonably suspects is, or about to be or is being removed from the State in breach of a Court Order regarding the custody of, or right of access to, or wardship of, or care of the child.

22.6. A member of An Garda Síochána may also detain a child while proceedings for any such order 'are pending' or where 'an application for one of those orders is about to be made'. Thus, the Gardaí can be asked to intervene by a parent who fears the other parent is about to abduct a child and leave the jurisdiction even prior to any *ex-parte* court application being made to restrain the other parent from such behaviour.

22.7. Section 37(2) provides that where a child is detained under this section a member of An Garda Síochána shall as soon as possible-

- (a) Return the child to the custody of a person (not being Túsla) in favour of whom a Court has made an order unless the member has reasonable grounds for believing that such person will act in breach of such order, or
- (b) Where the child has been in the care of Túsla, return the child to Túsla, or
- (c) In a case other than one to which paragraph (a) or (b) of this subsection applies, or where the member is of the belief referred to in the said paragraph (a), deliver the child into the care of Túsla in the area in which the child is for the time being.

22.8. Abduction of Child (outside the State) by Parent, Guardian, etc.

22.8.1. Section 16 of the Non-Fatal Offences Against the Person Act, 1997 prescribes the offence of the abduction of children under sixteen years out of the State by a parent, a guardian or a person to whom custody of the child has been granted by the court:

- (a) in defiance of a court order. or
- (b) without the consent of each person who is a parent, or guardian or person to whom custody of the child has been granted by a court unless the consent of a court was obtained.

22.8.2. Section 16 does not apply to a parent who is not a guardian of the child. In the case of an unmarried couple, the mother is the guardian unless the father has been appointed guardian under the Guardianship of Infants Act, 1964.

22.8.3. Proceedings under section 16 should only be instituted by or with the consent of the Director of Public Prosecutions.

22.8.4. An offence under section 16 of the Non-Fatal Offences Against the Person Act 1997 is an **arrestable offence** as the maximum penalty is imprisonment for 7 years.

22.8.5. The Act makes no provision for returning the child to the parent.

22.9. Abduction of Child by Persons other than the Parent, Guardian, etc.

22.9.1. Section 17 of the Non-Fatal Offences Against the Person Act, 1997 prescribes the offence of the abduction of children under sixteen years by persons other than a

parent, guardian, or a person to whom custody of the child has been granted by the court. Any such person commits an offence who, without lawful authority or reasonable excuse, intentionally takes or detains a child under the age of 16 years or causes a child under that age to be so taken or detained:

(c) so as to remove the child from the lawful control of any person having lawful control of the child. or

(d) so as to keep him or her out of the lawful control of any person entitled to lawful control of the child.

22.9.2. It shall be a defence to a charge under section 17 of the Act of 1997 that the defendant believed that the child had attained the age of 16 years.

22.9.3. An offence under section 17 of the Non-Fatal Offences Against the Person Act 1997 is an **arrestable offence** as the maximum penalty is imprisonment for 7 years.

23. Reckless Endangerment of Children

23.1. Many of the incidences of child abuse mentioned in this Part may occur with the knowledge of persons who are responsible for, or who have some form of control or authority over, either the children who have been abused or the abusers themselves.

23.2. Any person having authority or control over a child or abuser, commits the offence of reckless endangerment of children, contrary to section 176 of the Criminal Justice Act 2006, where that person intentionally or recklessly endangers a child by:

a) causing or permitting any child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse, or

b) failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation,

is guilty of an offence. The maximum penalty is 10 years imprisonment.

23.3. There is no requirement that any serious harm or sexual abuse has actually occurred. The necessary ingredient for the offence is that the child was simply **left in a situation which creates a substantial risk** of such serious harm or sexual abuse, or that reasonable steps were not taken to protect a child from such a risk.

23.4. “Abuser” means an individual believed by a person who has authority or control over

- that individual to have seriously harmed or sexually abused a child or more than one child.
- 23.5. “Child” means a person under 18 years of age, except where the context otherwise requires;
- 23.6. “Serious harm” means injury which creates a substantial risk of death or which causes permanent disfigurement or loss or impairment of the mobility of the body as a whole or of the function of any particular member or organ;
- 23.7. “Sexual abuse” means an offence under paragraphs 1 to 13 and 16(a) and (b) of the Schedule to the Sex Offenders Act 2001. See also Chapters 10 and 29 regarding indecency offences and the sexual exploitation of children.

24. Withholding of Information on Offences against Children

- 24.1.1. Members should note section 5.7 above regarding section 2 of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. Members should also note the defences provided for in section 4 of that Act.
- 24.1.2. “child” means a person who has not attained 18 years of age.

25. Cruelty To Children

- 25.1. All members must be cognisant of the nature of child abuse, which is described in-depth in *Children First: National Guidance for the Protection & Welfare of Children* (2011).
- 25.2. Cruelty to Children is defined by section 246(1) of the Children Act 2001, making it an offence for any person who has the custody, charge or care of a child wilfully to: assault, ill-treat, neglect, abandon or expose the child, or cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child’s health or seriously to affect his or her wellbeing.
- 25.3. The offence of Cruelty to Children is an **arrestable offence** that criminalises a wide range of behaviours, other than sexual abuse, that may be described as child abuse. Specifically, section 246(1) of the Act of 2001 addresses the following forms of child

abuse:

- Physical Abuse;
- Neglect;
- Emotional Abuse.

25.4. While *Children First: National Guidance* requires that members of An Garda Síochána notify such instances to Túsla, a criminal investigation will also be conducted by An Garda Síochána, where appropriate.

25.5. Members will note in the following paragraphs that parents/guardians or any other person who has the custody, charge, care of a child commits an offence not only by being directly responsible for the act of omission or commission concerned, but also by **allowing, causing or procuring others** to commit such acts.

25.6. **Physical Abuse**

25.6.1. Severe/excessive physical punishment and other forms of physical abuse by a parent/guardian or any other person who has the custody, charge or care of a child will be fully investigated.

25.6.2. Where a parent/guardian or any other person who has the custody, charge or care of a child wilfully:

- assaults or ill-treats the child, or
- causes/procures/allows the assault or ill-treatment of the child,

in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing, that person commits the offence of cruelty to children, contrary to section 246(1) of the Children Act 2001.

25.6.3. Other offences such as Assault, Assault Causing Harm and Causing Serious Harm contrary to sections 2, 3 and 4 respectively of the Non-Fatal Offences Against the Person Act 1997 may also be disclosed in such circumstances.

25.7. **Neglect**

25.7.1. *Children First: National Guidance* indicates that Túsla is not expected to routinely notify suspected cases of unintentional neglect to An Garda Síochána. However, many instances of neglect are criminal in nature and such cases will be fully

investigated when coming to the attention of An Garda Síochána.

25.7.2. Where a parent/guardian or any other person who has the custody, charge or care of a child wilfully:

- neglects, abandons, exposes a child, or
- causes/procures/allows such neglect, abandonment or exposure,

in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing, that person commits the offence of cruelty to children, contrary to section 246(1) of the Children Act 2001.

25.7.3. Section 246(5) of the Act of 2001 deems a person to have neglected a child in a manner likely to cause the child unnecessary suffering or injury to his or her health or seriously to affect his or her wellbeing, if that person:

- fails to provide adequate food, clothing, heating, medical aid or accommodation for the child, or
- being unable to provide such food, clothing, heating, medical aid or accommodation, fails to take steps to have it provided under the enactments relating to health, social welfare or housing.

25.8. **Emotional Abuse**

25.8.1. As with neglect, *Children First: National Guidance* indicates that Túsla is not expected to routinely notify suspected cases of emotional abuse to An Garda Síochána as such cases do not always result in breaches of the criminal law. However, certain instances of emotional abuse may be criminal in nature and will be investigated as such when coming to the attention of An Garda Síochána.

25.8.2. Section 246(6) of the Act of 2001 provides that any reference to a child's health or wellbeing includes a reference to the child's mental or emotional health or wellbeing.

25.8.3. Section 246(7) deems ill-treatment of a child to include any frightening, bullying or threatening of the child.

25.8.4. Where a parent/guardian or any other person who has the custody, charge or care of a child wilfully:

- ill-treats a child, or
- causes/procures/allows such ill-treatment,

in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing, that person commits the offence of cruelty to children, contrary to section 246(1) of the Children Act 2001.

25.9. Investigation & Recording of Complaints of Cruelty to Children

25.9.1. All instances of cruelty to children and will be fully investigated. The investigation of such incidents will be subjected to rigorous review and scrutiny by supervisory ranks.

25.9.2. Notifications will be made to Túsla in all cases involving cruelty to children.

25.9.3. Any decision not to submit a file on the matter to the Director of Public Prosecutions rests with the relevant District Officer who should ensure that an exhaustive investigation has taken place and that no further avenues of investigation are currently available. An accurate record will be made of all such decisions and reasons for same.

26. Investigation of Complaints of Child Sexual Abuse

26.1. An investigation file will be submitted to the Director of Public Prosecutions and/or the Director of the National Juvenile Office, as appropriate, in every case where a suspect has been identified and evidence is available.

26.2. Any decision not to submit a file on the matter to the Director of Public Prosecutions rests with the relevant District Officer who should ensure that an exhaustive investigation has taken place and that no further avenues of investigation are currently available. An accurate record will be made of all such decisions and reasons for same.

26.3. Any decisions regarding the investigation of complaints of child sexual abuse such as a decision to maintain surveillance on a suspected perpetrator is a matter for the officer in charge of each investigation who is usually the local District Officer. There is no hard or fast rule in this regard and each case should be judged on its own merits by the local investigation team who are most suitably placed to make decisions/recommendations regarding the investigation (including surveillance).

26.4. District Officers should be cognisant of the advice and assistance which is available through the Domestic Violence and Sexual Assault Investigation Unit at the National Bureau of Criminal Investigation. This unit should be contacted for such advice,

assistance and guidance when deemed appropriate by the District Officer.

27. Children, Sexual Offences & the Age of Consent

27.1. To secure a conviction for sexual offences, that the complainant did not consent to the act that is the subject of the charge is often a required proof. Certain offences against intellectually disabled persons (see Chapter 14 in Part I of this document) are an exception to that rule. There are also many sexual offences committed in relation to children where it is not a defence to show that the child consented to the act involved in the commission of the offence.

27.2. Outlined below are instructions regarding specific offences relating to issues around sexual offences committed against children and consent.

27.3. Unlawful Carnal Knowledge of a Girl, Defilement of a Child and Rape

27.3.1. Proving the offence of rape specifically requires that a man had sexual intercourse with a woman without her consent, knowing that she did not consent or being reckless as to whether or not she consented. When the female in those same circumstances is a child the offence of rape may still be committed but a conviction of rape can only be justified if the court is satisfied that the female child had not consented to the intercourse or that there was recklessness on the part of the male regarding consent.

27.3.2. Sections 1 and 2 of the Criminal Law Amendment Act 1935 provided that sexual intercourse with girls under the ages of 15 and 17 respectively was an offence. The consent of the girl concerned was no defence to a charge. These offences were variously known as:

- defilement of a girl;
- unlawful carnal knowledge of a girl, and;
- ‘statutory rape’.

27.3.3. However, on 23rd May 2006 the Supreme Court ruled that section 1(1) of the Act of 1935 was inconsistent with the provisions of the Constitution as it did not allow a defendant to advance a defence of reasonable mistake as to the age of the complainant.

27.3.4. On 2nd June 2006 the Criminal Law (Sexual Offences) Act 2006 provided for the new offences of Defilement of a Child under the age of 15 (section 2) or 17 (section 3) years. These new offences replaced those of sections 1 and 2 of the Act of 1935 and substantially broadened their application. In addition to sexual intercourse they applied to acts of buggery and those acts that would constitute the offences of aggravated sexual assault or rape under section 4. The new offences are also gender neutral, applying to both male and female children while the previous offences applied to girls only. The consent of the child to the sexual act constituting the offence cannot be used as a defence.

27.3.5. The Criminal Law (Sexual Offences) Act 2006 allows the defence that the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 or 17 years as the case may be.

27.3.6. Members investigating historical complaints of sexual abuse of children should be mindful that where sexual intercourse with a girl under 15 years or under 17 years is reported to have occurred prior 2nd June 2006, **an arrest or detention** for an offence under sections 1 or 2 of the Criminal Law Amendment Act 1935 **is not lawful**. These offences were repealed because they have been found by the Supreme Court to be inconsistent with the provisions of the Constitution.

27.3.7. Furthermore, an arrest and detention for the offence of rape is not appropriate in such circumstances unless it can be shown that the girl did not consent to the sexual intercourse, or that the male was reckless as to whether or not she consented. The appropriate offences may include indecent assault (for incidents prior to January 1991) or sexual assault, depending on the reported behaviour and whether the child was under 15 years or 17 years of age at the time.

27.4. **Sexual Assault and Indecent Assault**

27.4.1. Section 14 of the Criminal Law Amendment Act 1935 provides that it shall not be a defence to a charge of indecent assault upon a person under the age of 15 years to prove that such person consented to the act constituting the indecent assault.

27.4.2. In *D.P.P. v E.F* (Supreme Court, unreported, 24 February 1994) it was held that the offence of indecent assault though now known as sexual assault remains an offence at common law. Therefore section 14 of the Criminal Law (Amendment) Act, 1935

remains in force.

27.5. Rape Under Section 4 and Aggravated Sexual Assault

27.5.1. As mentioned above, acts committed since 2nd June 2006 that constitute an offence under sections 3 (aggravated sexual assault) or 4 (rape under section 4) of the Criminal Law (Rape) (Amendment) Act 1990 amount to a Defilement of Child pursuant to sections 2 (for children under 15 years) or 3 (for children under 17 years) of the Criminal Law (Sexual Offences) Act 2006.

27.5.2. Where the offences of Aggravated Sexual Assault and Rape Under Section 4 are committed prior to 2nd June 2006, section 14 of the Criminal Law Amendment Act 1935 applies in relation to children under the age of 15 years, as those offences involve a sexual assault, albeit with additional ingredients.

28. Sexual Exploitation of Children (under 18 years)

28.1. Section 3 of the Child Trafficking & Pornography Act, 1998, as amended by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 and section 3 of the Criminal Law (Human Trafficking) Act 2008 provides for substantial offences relating of the sexual exploitation of a child.

28.2. In particular the offence of the sexual exploitation of a child, contrary to section 3(2) of the 1998 Act (as amended by the 2008 Act) provides a single offence that criminalises almost anything involving sexual activity and children. Section 3(5) of the 1998 Act as inserted by the 2008 Act defines sexual exploitation as follows:

- Inviting, inducing or coercing the child to engage in prostitution or the production of child pornography.
- The prostitution of the child or the use of the child for the production of child pornography.
- The commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child; causing another person to commit such an offence against the child; or inviting, inducing or coercing the child to commit such an offence against another person.
- Inviting, inducing or coercing the child to engage or participate in any sexual, indecent or obscene act.
- Inviting, inducing or coercing the child to observe any sexual, indecent or

obscene act, for the purpose of corrupting or depraving the child.

- 28.3. The penalty for an offence contrary to section 3(2) of the Act of 1998 is imprisonment for life or a lesser term, or of a fine at the discretion of the court.
- 28.4. **A child** is defined for the purposes of section 3 of the 1998 Act as being a person **under the age of 18 years**.
- 28.5. Unless circumstances dictate that other legislation is more appropriate, it is recommended for investigations regarding the sexual abuse of children following the enactment of the Criminal Law (Human Trafficking) Act 2008 on 7th June 2008 that, where appropriate, members utilise this legislation for the purposes of arrest and detention of suspects as it covers such a wide spectrum of child sexual abuse. This may more easily facilitate decisions regarding the offences being investigated in the context of arresting and detaining suspects and may also reduce the need to continue detentions for different offence types that have been committed on different dates.
- 28.6. Where an act of indecency (commonly known as indecent exposure) is intentionally committed in the presence and sight of a child, this may amount to an invitation to the child to observe a sexual, indecent or obscene act, for the purpose of corrupting or depraving the child and may amount to the sexual exploitation of a child. See Chapter 10 in relation to indecency offences.
- 28.7. Recommendations as to the appropriate charges may still be made in the file submitted to the Director of Public Prosecutions regarding other offences disclosed. Where it applies, a charge for the offence of sexually exploiting a child should always be recommended.

29. Meeting a Child for the Purpose of Sexual Exploitation

- 29.1. Subsections (2A) and (2B) of section 3 of the 1998 Act, as inserted by section 6 of the 2007 Act refer to persons travelling to meet children for the purpose of sexually exploiting those children. This offence may be committed within or outside the State.
- 29.1.1. Section 3(2A) makes it an offence to intentionally meet, or travel with the intention of meeting, a child within the State, having met or communicated with that child on 2 or more previous occasions, for the purpose of the sexual exploitation of that child.

29.1.2. Section 3(2B) makes it an offence to intentionally meet, or travel with the intention of meeting, a child outside the State, having met or communicated with that child on 2 or more previous occasions, for the purpose of the sexual exploitation of that child.

30. Trafficking of Children for the Purpose of Sexual Exploitation

30.1. Section 3(1) of the Child Trafficking & Pornography Act, 1998, as amended by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 and section 3 of the Criminal Law (Human Trafficking) Act 2008 provides for the offence of trafficking a child for the purposes of the sexual exploitation of that child.

30.2. Trafficking is defined as

- procuring, recruiting, transporting or harbouring the
- child, or—
 - transferring the child to,
 - placing the child in the custody, care or charge, or under the control, of, or
 - otherwise delivering the child to,another person,
- causing the child to enter or leave the State or to travel within the State,
- taking custody of the child or taking the child—
 - into one's care or charge, or
 - under one's control,or
- providing the child with accommodation or employment.

31. Sexual Crimes committed against Children outside the State

31.1. Three pieces of legislation deal with the issue of Irish citizens or persons ordinarily residing in the State committing sexual offences against children outside the State:

- Section 3(2B) of the 1998 Act (as amended by section 6 of the 2007 Act),
- The Sexual Offences (Jurisdiction) Act 1996, and
- Section 7 of the Criminal Law (Human Trafficking) Act 2008.

31.2. Section 3(2B), Child Trafficking & Pornography Act, 1998

31.2.1. Section 3(2B) of the Child Trafficking & Pornography Act, 1998 (as amended by section 6 of the Criminal Law (Sexual Offence) (Amendment) Act 2007 which relates to meeting or travelling to meet children outside the State for the purpose of their sexual exploitation has already been outlined above.

31.3. Sexual Offences (Jurisdiction) Act 1996

31.3.1. The Sexual Offences (Jurisdiction) Act 1996 makes it an offence to do an act outside the State that constitutes:

- an offence in the place where the act was done, and
- an offence in this State - as outlined in the Schedule of the Sexual Offences (Jurisdiction) Act 1996.

31.3.2. The act done, therefore, must be an offence in both this State and the place where it occurred.

31.3.3. The schedule of the 1996 Act lists the offences generally associated with child sexual abuse.

31.4. Section 7, Criminal Law (Human Trafficking) Act 2008

31.4.1. Section 7(1) of the Criminal Law (Human Trafficking) Act 2008 makes it an offence for any Irish citizen, or any person normally resident in the State, does an act in a place other than the State that, if done in the State, would constitute an offence under section 3 (other than subsections (2A) and (2B)) of the Child Trafficking & Pornography Act, 1998 (as amended).

31.4.2. Section 7(2) of the 2008 Act makes it an offence for any person to do an act in relation to an Irish citizen in a place other than the State that, if done in the State, would

constitute an offence under section 3 (other than subsections (2A) and (2B)) of the Act of 1998.

31.4.3. The offences outlined in section 3 of the 1998 Act (as amended by section 3 of the 2008 Act) that are included in the provisions of Section 7(1) and 7(2) of the 2008 Act are:

- The trafficking of children - contrary to section 3(1)
- The sexual exploitation of a child - contrary to section 3(2)
- Causing another person to commit an offence under subsection (1) or (2) – contrary to section 3(3)
- Attempting to commit an offence under subsection (1), (2) or (3) of section 3 – contrary to section 3(4).

31.4.4. The offences outlined in section 3 of the 1998 Act (as amended by section 3 of the 2008 Act) that are **excluded** from this provision are:

- Meeting, or travelling with the intention to meet, children within the State for the purpose of the sexual exploitation of a child - contrary to section 3(2A), and
- Meeting, or travelling with the intention to meet, children outside the State for the purpose of the sexual exploitation of a child - contrary to section 3(2B).

31.4.5. It should be noted that, unlike the 1996 Act, there is no requirement within the 2008 Act for the act done, to be an offence in the place (outside the State) where it occurred so long as the act done constitutes a relevant offence in this State.

31.4.6. Other human trafficking offences are also included in section 7 of the 2008 Act.

32. Provisions of Section 16(1)(b) Criminal Evidence Act, 1992

32.1. By virtue of Statutory Instrument No. 401 of 2008, section 16(1)(b) of the Criminal Evidence Act, 1992 commenced on the 15th October, 2008.

32.2. Section 16(1)(b) of the 1992 Act provides for the video recording of any statement made by a person **under 14 years of age** (being a person in respect of whom an offence is alleged to have been committed) during an interview with a member of An Garda Síochána or any other person competent for that purpose.

32.3. By virtue of section 19 of the Criminal Evidence Act 1992, any reference in section 16(1)(b) of the Criminal Evidence Act 1992 to a person under the age of 14 years includes references to a **person with an intellectual disability** ('mental handicap' as outlined in the Act of 1992) who has attained the age of 14 years. See also section 14.4 above.

32.4. The offences to which section 16(1)(b) applies are outlined in section 12 of the 1992 Act, as amended and substituted by section 10 of the Child Trafficking & Pornography Act 1998 and section 12 of the Criminal Law (Human Trafficking) Act 2008, and are as follows:

- a) a sexual offence, as defined in the 1992 Act (as amended)
- b) an offence involving violence or the threat of violence to a person,
- c) an offence under section 3, 4, 5 or 6 of the Child Trafficking and Pornography Act 1998 ,
- d) an offence under section 2, 4 or 7 of the Criminal Law (Human Trafficking) Act 2008, or
- e) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in (a) or (b) above.

32.5. **There is an absolute obligation on investigating members to refer the interviewing of such complainants to trained Specialist Interviewers.** Specialist Interviewers have undergone intensive training and are deemed competent to interview such complainants. Members (who are not trained Specialist Interviewers) will not attempt to take a statement from a person who is under 14 years of age or a person with intellectual disability who complains of a sexual offence or an offence involving violence or threats of violence, **except in exceptional urgent circumstances**. Such exceptional urgent circumstances involve the imminent risk of:

- loss of life, or injury to the health of any person;
- harm to the health or welfare of a child;
- an offender absconding;

- the destruction of evidence, or;
- a serious loss of, or damage to, property

and it would not be sufficient for the prevention of such occurrences to await the interviewing of the complainant by a specialist interviewer. Members will record any decision to conduct such interviews, along with the rationale for making the decision.

- 32.6. It is essential that all complainants as outlined at sections 33.2 to 33.4 above are dealt with in accordance with the provisions of section 16(1)(b) to ensure that they are afforded the protections as envisaged by those provisions (i.e. not being required to give live evidence in criminal proceedings, unless otherwise directed by the Court).

33. Specialist Interviewers in An Garda Síochána

- 33.1. As part of An Garda Síochána's response capability to deal with complainants of serious crime a number of Gardaí have been trained as Specialist Interviewers and are available in each Region throughout the country.

- 33.2. The volume of serious crime occurrences in the categories outlined at section 33.4 in each District/ Division/ Region will dictate the number of personnel to be trained in this specialist role in each District/Division/Region.

33.3. Role of Specialist Interviewers

- 33.3.1. The primary role of the Specialist Interviewer is to interview, pursuant to section 16(1)(b) Criminal Evidence Act 1992 as amended, children under 14 years of age and persons with an intellectual disability ('mental handicap' as outlined in the 1992 Act) who are making complaints in relation to sexual crime, or offences involving violence or threats of violence.

- 33.3.2. The secondary role of the Specialist Interviewer is to interview victims of sexual crime or serious crime or witnesses to those crimes, as directed.

- 33.3.3. When not engaged in such interviews they will, in ordinary course, engage in regular policing duties as directed by their supervisors.

- 33.3.4. The interviewing of children under the age of 14 years or persons with an intellectual disability will at all times be actioned as a **matter of priority**. District Officers will

ensure that Specialist Interviewers are released for this type of duty.

- 33.3.5. Specialist interviewers will not interview suspects. It is vital that the skills developed by Specialist Interviewers are maintained and not compromised by the model of interviewing required for suspect interviews. Level 3 Interviewers should be tasked with the interviewing of vulnerable suspects.
- 33.3.6. Where possible Specialist Interviewers will not be engaged as Family Liaison Officers and then only when trained to do so, and will not be used as a Family Liaison Officer in any case where they have conducted an interview. Specialist Interviewers, where possible, should not be nominated for training as Family Liaison Officers.
- 33.3.7. Specialist Interviewers will ordinarily interview children and persons with Intellectual disability in plain clothes unless circumstances dictate otherwise.
- 33.3.8. The **Good Practice Guidelines for video recording interviews in accordance with section 16(1)(b) of the Criminal Evidence Act, 1992 (2003)** set out the issues to be considered during preparation for an interview with a child or person with intellectual disability and among these are developmental factors in relation to the child or person with intellectual disability. Having considered all the relevant matters, Specialist Interviewers may deem it appropriate to conduct certain interviews in uniform.
- 33.3.9. Any decision in this regard will be made in the best interest of the child or person with intellectual disability bearing in mind the complainant's expectation of the Garda role.

33.4. **Dedicated Interview Suites**

- 33.4.1. A number of dedicated interview suites have been secured at strategic locations throughout the country designed to provide appropriate facilities for interviewing complainants in accordance with the provisions of section 16(1)(b) of the Criminal Evidence Act, 1992. The interview suites have the capacity to record witness statements on DVD. The recording equipment produces three copies of the videorecorded interview on three DVD's. The interview suites are independently located away from Garda Stations and their locations are listed on the Garda Síochána Portal.

33.4.2. Interviews conducted at these suites in accordance with Section 16(1)(b) of the Criminal Evidence Act, 1992 will only be conducted by trained Specialist Interviewers.

33.4.3. The interview suites may also be used for the interviewing of complainants of other serious crime when deemed appropriate by the District Officer in charge of the investigation and in consultation with the District Officer in whose area the suite is located. The interviewing of children and persons with an intellectual disability will at all times take precedence over other interviews.

33.4.4. The interview suites will not be used for any purpose other than the interviewing of **complainants**.

33.5. **Responsibilities of District Officers**

33.5.1. The District Officer will have overall command and is responsible for the direction of enquiries into criminal investigations and critical incidents in her/his District and will appoint an investigating Garda. A Senior Investigating Officer (SIO) may be appointed to investigate certain occurrences.

33.5.2. The involvement of Túsla social workers, trained as Specialist Interviewers, **will also be utilised** where available and appropriate. Requests for the services of Túsla Social Workers trained as Specialist Interviewers will be made by the District Officer in charge of the investigation, in consultation with the Divisional Officer, through the appropriate Child Care Manager.

33.5.3. When Specialist Interviewers are not engaged in their Specialist Interviewer role, District Officers, through the relevant supervisory ranks, will otherwise have responsibility for the tasking of Specialist Interviewers.

33.5.4. When an interview has been conducted in accordance with section 16 (1)(b) of the Criminal Evidence Act 1992 (as amended), the Specialist Interviewers will hand the original and master copy of the DVD's to District officer in charge of the District in which the alleged offence took place. The original copy is sealed by the Specialist Interviewers for court proceedings, while the master copy is reserved for making copies as requested (eg DPP's copy, Defence copy, Túsla, etc.) in accordance with **Good Practice Guidelines (2003)**.

- 33.5.5. To ensure **continuity of evidence**, the District Officer will ensure that:
- the original and master DVD recordings are placed in a secure location provided for the custody of such recordings;
 - a register is kept of all original DVD recordings, including a record of the movement of all DVD's to and from the secure location;
 - each recording is assigned an identification number.
- 33.5.6. Where a copy of or access to the master DVD recording is to be provided, the District Officer will give written authority to a named Garda who will make the relevant number of copies and/or provide access to the DVD recording. The written authority shall be retained by the District Officer and a copy given to the nominated Garda. Where such access is provided or any copy made, a record shall be kept and lodged with the District Officer by the nominated Garda. No copies shall be provided nor any copy made of the said master copy without the prior written authority of the relevant District Officer.
- 33.5.7. The record shall include the following information:
- the number of copies made (each copy made from mastercopy shall be designated 'first copy' second copy etc.,
 - the authorised party to whom any copy was sent,
 - a copy of the **Form of Undertaking** (Annex E, Good Practice Guidelines, 2003) from each authorized party, undertaking not to copy the said recording or to part with possession of the recording without written authorization of the District Officer.
- 33.5.8. Copies will only be made by the Garda nominated by the District Officer and records will be maintained in accordance with **Good Practice Guidelines (2003)**.
- 33.5.9. Where access is refused to a third party by the District Officer, it is open to any party to proceedings to apply to the court for access. It is then a matter entirely for such court to act as it deems proper.
- 33.5.10. Superintendents will ensure that:
- all files pertaining to offences under 16(1) (b) of the 1992 Act include a copy of the DVD and a copy of the **Specialist Interviewers Summary Record Form S.I.2** (see section 34.10).
 - a thorough review is conducted of all files submitted for directions of the

laws officers. A review of the DVD and the **Specialist Interviewers Summary Record Form S.I.2** (see section 34.10) must form an integral part of this process.

33.6. Responsibilities of Detective Superintendents

33.6.1. This instruction refers the Detective Superintendent in each region outside the Dublin Metropolitan Region and to the Detective Superintendent in each Division within the Dublin Metropolitan Region.

33.6.2. The Detective Superintendent shall be responsible for ensuring that interviews are conducted in accordance with section 16(1)(b) of the Criminal Evidence Act 1992 and in accordance with the Good Practice Guidelines (2003). In this regard she/he should view, or cause to be viewed, a selected number of interviews each quarter and discuss any issues of concern with the interviewer concerned. These interviews are evidentially vital in all investigations where the Specialist Interviewers are utilised and as such it is essential that they are conducted in accordance with relevant legislation and training.

33.6.3. Detective Superintendents will also conduct regular evaluations of the Decision Logs maintained by Specialist Interviewers.

33.7. Responsibilities of Divisional Officers

33.7.1. Each Divisional Officer will be responsible for ensuring that Specialist Interviewers are made available for conducting interviews in accordance with section 16(1)(b) of the Criminal Evidence Act 1992. District Officers will otherwise have responsibility for the tasking of Specialist Interviewers. The Divisional Officer will ensure that any interviews to be conducted are assessed and prioritised with trained members made available to conduct the interview process.

33.7.2. It is incumbent on Divisional and District Officers to ensure that Specialist Interviewers are afforded appropriate time to properly plan each interview.

33.8. Responsibilities of Investigating Gardaí

33.8.1. The investigating Garda will, through appropriate channels, notify the District Officer in charge of the investigation of the requirement for Specialist Interviewers. Bearing

in mind the nature of such an application, members of each rank will ensure that the notification to the District Officer is expedited.

33.8.2. Investigating Gardaí will have responsibility for **Children First notifications**, liaising with Túsla Child Protection personnel and the completion of the **Record of Garda Túsla Liaison Form**. However, Specialist Interviewers should accompany Investigating Gardaí to Strategy Meetings (and Child Protection Conferences where appropriate) prior to any interviews taking place. Decisions pertaining to all such cases will be based on the principle that the welfare of the child is the paramount concern.

33.8.3. The investigating Garda shall watch the DVD of the recorded interview in its entirety, but with particular reference to areas identified on the **Specialist Interviewers Summary Record Form S.I.2.** (see section 34.10). It is essential that the value of the evidence obtained from the interview can be referenced in the investigation file forwarded to the Director of Public Prosecutions and that the appropriate recommendations are made based on the content of the interview.

33.8.4. Decision Logs maintained by Specialist Interviewers as part of the interview process should not be routinely submitted as part of the file to the Director of Public Prosecutions but may be referenced in the covering report. The Director should be advised in the covering report that they are available, should they be required.

33.9. **Responsibilities of Specialist Interviewers**

33.9.1. Specialist Interviewers should accompany Investigating Gardaí to Strategy Meetings (and Child Protection Conferences where appropriate) with Túsla Child Protection Social Workers prior to any interviews taking place. Decisions pertaining to all such cases will be based on the principle that the welfare of the child is the paramount concern.

33.9.2. The **Good Practice Guidelines (2003)** highlight the need for adequate inter-agency consultation and planning in order that the agencies involved have an opportunity to consider the complainant's needs, the legal context, and the various implications of the interview before it takes place.

33.9.3. In accordance with **Children First National Guidance (2011)**, adequate inter-agency consultation and planning requires the completion of a **Record of Garda Túsla**

Liaison Form in all cases where children are involved. Investigating Gardaí and Specialist Interviewers should liaise with Túsła personnel to ensure that this form is completed in all cases.

- 33.9.4. Where it has been deemed necessary to conduct an interview without the completion of the Record of Garda Túsła Liaison Form, such a decision should be recorded in the Decision Log maintained by the Specialist Interviewer, along with the rationale for the making of that decision.
- 33.9.5. Specialist Interviewers will carry out Clarification Meetings with all potential interviewees.
- 33.9.6. **Decision Logs** will be accurately maintained by Specialist Interviewers at all times.
- 33.9.7. Personal issue ear pieces are given to all Specialist Interviewers at the end of Stage 1 of their training. Safe keeping and maintenance of the ear piece is the responsibility of each Specialist Interviewer.
- 33.9.8. Written consent form must be obtained from the parent / guardian in advance of any interview being conducted with a child or person with intellectual disability. In respect of children in care, written consent should be obtained as appropriate from Túsła.
- 33.9.9. Any further assistance required (e.g. translators) will be arranged by the Specialist Interviewers conducting the interview.
- 33.9.10. All interviews must be well planned, and will be carried out in accordance with **Good Practice Guidelines (2003)**.
- 33.9.11. From time to time persons being interviewed in accordance with the provisions of section 16(1)(b) of the 1992 Act or attending clarification meetings prior to the interview may not make the disclosure expected of them. This must be accepted as a valid result of the interview or clarification meeting. There will be no departure from the **Good Practice Guidelines (2003)** to obtain a disclosure from a child or a person with an intellectual disability.

33.9.12. Prior to each interview Specialist Interviewers will ensure that all recording equipment is in good working order and will pay particular attention to the audio recording equipment. Tests will be carried out to ensure that the equipment is functioning satisfactorily in advance of conducting the interview.

33.9.13. There is a **radio microphone** provided in the interview suite. Where practicable, this microphone should be fitted to the interviewee prior to the commencement of the interview.

33.9.14. On completion of each interview Specialist Interviewers will:

- check quality of vision and sound of the D.V.D's
- review the entire interview for the purpose of completing an **Specialist Interviewers Summary Record Form S.I.2**. (see section 34.10).

33.9.15. There are three DVD's:

- (i) Original for court (sealed)
- (ii) Master copy for making copies as requested (eg DPP's copy, Defence copy, Túsla, etc.) in accordance with **Good Practice Guidelines (2003)**.
- (iii) Working copy for Investigating Garda/ team.

33.9.16. The original DVD will be sealed and labelled in accordance with Good Practice Guidelines (2003).

33.9.17. Once the original and master copy has been designated, Specialist Interviewers will hand the DVDs to District Officer in charge of the District in which the alleged offence took place to ensure continuity of evidence.

33.9.18. The Specialist Interviewer(s) will provide the Investigating Garda with a working copy of the recording, a certified **Specialist Interviewers Summary Record Form S.I.2** (see section 34.10), a statement of evidence and a copy of **Decision Log**.

33.10. **Specialist Interviewers Summary Record Form S.I.2**

33.10.1. A **verbatim record** of the substantive issues (both questions and answers) will be recorded in writing and certified by the Specialist Interviewers on a **Specialist Interviewers Summary Record Form S.I.2**.

33.10.2. The overall function of the **Specialist Interviewers Summary Record Form S.I.2** is to contribute towards the effective investigation and management of a case, by guiding investigating members and prosecutors through **their viewing** of the video recorded interview.

33.10.3. The **Specialist Interviewers Summary Record Form S.I.2** is not:

- A statement
- A full transcript
- A replacement for the DVD

33.10.4. It should not be confused with any notes taken by the second Interviewer monitoring the interview for the purpose of determining any immediate investigative action that might be necessary.

33.10.5. The **Specialist Interviewers Summary Record Form S.I.2** should be completed as soon as practicable after the interview and should give a chronological account of the conduct of the interview. It should be a **verbatim record** of the salient issues bearing in mind the following:

- Identification issues such as detailed descriptions and/or identifying features of suspects
- Details of the location of the incident
- Proofs of the offence(s)
- Details of time, frequency, dates, location(s) and those present when the alleged offence(s) occurred
- The extent of any injuries
- Any threats made
- Any aggravating factors e.g. racial, homophobic, gender
- Any other disclosures which may require follow up investigation by the investigation team.
- In cases of alleged sexual offences, details of first reporting by the complainant.
- Any issue that may undermine the prosecution case or which may support the defence case.

33.10.6. It must be understood that the **Specialist Interviewers Summary Record Form S.I.2** is an aide to investigators and prosecutors only. There is an absolute obligation on investigators to view the DVD in its entirety in conjunction with the Specialist

Interviewers Summary Record Form S.I.2. Investigators are advised to liaise with Specialist Interviewers as appropriate during the investigation. Consideration should be given to the benefit of having Specialist Interviewers attend at Investigation Conferences.



PART III

CHILD WELFARE

PART III - WELFARE OF CHILDREN

34. Introduction

- 34.1. [Children First: National Guidance for the Protection and Welfare of Children \(2011\)](#) previously published in 1999 is adopted as Garda policy. Although the guidance is not currently on a statutory footing, it is adopted as Garda policy and, as such, is mandatory for all members of An Garda Síochána. It clearly outlines the duty of all members of An Garda Síochána in relation to the welfare and protection of children. Where a member suspects that a child has been, is being, or is at risk of being abused, she/he will make the required notification or referral Túsla, The Child and Family Agency.
- 34.2. For the purpose of *Children First National Guidance*, **'a child' means a person under the age of 18 years**, excluding a person who is or has been married.
- 34.3. Child abuse is not restricted to any socio-economic group, gender or culture. All signs must be considered in the wider social and family context. However, serious deficits in child safety and welfare transcend cultural, social and ethnic norms, and must elicit a response.
- 34.4. Children, because of their dependency and immaturity, are vulnerable to abuse in its various forms. Parents or guardians have primary responsibility for the care and protection of their children. A proper balance must be struck between protecting children and respecting the rights and needs of parents/carers and families. Where there is conflict, the child's welfare must come first. When parents or guardians do not, or cannot, fulfil this responsibility, it may be necessary for An Garda Síochána and Túsla to intervene to ensure that children are adequately protected.
- 34.5. The [Children First: National Guidance for the Protection and Welfare of Children 2011](#) is designed to assist in the identification and reporting of child abuse. While the needs of parents and families must be at the centre of child welfare and protection services, **the welfare of children is of paramount importance**. The *Children First National Guidance* highlights the roles and responsibilities of An Garda Síochána and Túsla, as the two agencies with statutory responsibility for child protection. It also offers guidance to other agencies and voluntary organisations in contact with or providing services to children.

- 34.6. *Children First National Guidance* is also intended to provide a framework to support the enhancement of interagency cooperation and the strengthening of multidisciplinary responses to child abuse. Effective child protection will be best achieved where the national guidance and local procedures are supported by comprehensive training, supervision and support services for families and children.
- 34.7. Child abuse can be categorised into four different types: **neglect, emotional abuse, physical abuse** and **sexual abuse**. A child may be subjected to one or more forms of abuse at any given time. More detail regarding each type of abuse can be found in the *Children First National Guidance* and Part II of this document (Investigation of Crimes Against Children) provides direction in relation to the criminal investigation of each form of child abuse.
- 34.8. It is vital that all instances of child abuse are:
- (iv) the subject of a **full criminal investigation**, and
 - (v) **notified to Túsla**.

35. Túsla Child Care Advisory Committees

- 35.1. Section 7 of the Child Care Act, 1991 requires Túsla to establish in each of its functional areas a Child Care Advisory Committee to advise it on the performance of its functions under the legislation. The membership of each Child Care Advisory Committee will include one Garda representative to be appointed by the Commissioner.
- 35.2. Each Chief Superintendent will nominate a member of Inspector rank to represent An Garda Síochána on the local Child Care Advisory Committee. Such nominations will be forwarded to Chief Superintendent, Community Relations Section, who will co-ordinate these appointments with relevant Túsla personnel.
- 35.3. Inspectors nominated to these committees will ensure that minutes of all Child Care Advisory Committee meetings are forwarded to the Divisional Officer. Such minutes will be filed at Divisional Offices.
- 35.4. Any matters arising at such committees which may impact on Garda Policy will be reported to Chief Superintendent Community Relations and Detective Superintendent Domestic Violence & Sexual Assault Investigation Unit.

36. Responsibility to Report Abuse or Neglect

36.1. Children may suffer long-lasting emotional and/or psychological harm as a result of abuse. Physical abuse and neglect can be fatal and some children may be permanently disabled or disfigured as a result of such child abuse. Every member must be alert to the possibility that children with whom they are in contact may have been abused, are being abused, or are at risk of abuse. Concerns must be reported to Túsla.

36.2. Deprivation, stress, addiction, mental health problems or diverse cultures cannot be used as a justification for omissions of care or the commission of harm by parents/carers. Members will refer all such cases to Túsla notwithstanding that any abuse or neglect may be unintentional.

36.3. The guiding principles in regard to reporting child abuse or neglect may be summarised as follows:

- the safety and well-being of the child must take priority;
- reports will be made without delay to Túsla.

36.4. Any reasonable suspicion of abuse must elicit a response. Ignoring the signals or failing to intervene may result in ongoing or further harm to the child.

36.5. Decisions not to Notify Túsla of Incidents involving Child Welfare

36.5.1. While, in general, all incidents involving child welfare will be notified to Túsla, there may be exceptional circumstances where it is decided that such a referral or notification is not appropriate or necessary.

36.5.2. Where a decision is made **not to notify** Túsla regarding any incident involving child welfare, this decision will be made by the District Officer (or, in her/his absence, the Inspector acting for the District Officer) in whose District the incident occurred. The District Officer, or the acting District Officer, will retain in writing a record of that decision and the reasons justifying such a decision.

36.5.3. No other member in the District will make such a decision. All incidents involving children will be referred to the District Officer.

37. Basis For Reporting Concerns To Túsla

37.1. Túsla must always be informed when a member has reasonable grounds for concern that a child may have been abused, is being abused, or is at risk of abuse.

37.2. The following examples would constitute reasonable grounds for concern:

- a specific indication from the child that he or she was abused;
- an account by a person who saw the child being abused;
- evidence, such as an injury or behaviour, that is consistent with abuse and unlikely to be caused in another way;
- an injury or behaviour that is consistent both with abuse and with an innocent explanation, but where there are corroborative indicators supporting the concern that it may be a case of abuse. An example of this would be a pattern of injuries, an implausible explanation, other indications of abuse and/or dysfunctional behaviour;
- consistent indication, over a period of time, that a child is suffering from emotional or physical neglect.

37.3. Where an adult reports historical child abuse it is essential to establish whether there is any current risk to any child who may be in contact with the suspected abuser revealed in such disclosures.

37.4. Where a child has been involved in the commission of a criminal offence, particularly where a child has been arrested, members should always consider notifying Túsla in accordance with *Children First: National Guidance* (2011).

37.5. Where there is a concern because of a child's behaviour that there is an immediate and serious risk to the health or welfare of that child, removing her/him to safety pursuant to [Section 12 of the Child Care Act 1991](#), as outlined in Chapter 41, should be given careful consideration.

37.6. Persons who Pose a General Risk to Children

37.6.1. There are many persons who have been convicted of, prosecuted (whether successful or not) for, are currently the subject of a prosecution for, or have been suspected but never prosecuted/convicted of having committed offences, and who pose a risk to the welfare of children.

- 37.6.2. Notifications will have been made regarding the children who have been the subject of such suspicions, investigations, prosecutions and/or convictions.
- 37.6.3. Notifications should also be made to Túsla regarding any other children or groups of children who have been specifically identified as being at risk because of the contact that the person posing the risk has with them, such as:
- Family members who are children;
 - The children of a person with whom the person posing the risk establishes an intimate relationship;
 - Children with whom the person posing the risk comes in contact as a result of her/his occupation;
 - Children in clubs, societies and other children's organisations of which the person posing the risk may be a member;
 - Other children who have been identified as coming into contact with the person posing the risk on an ongoing basis.
- 37.6.4. However, persons posing such a risk often reside or work in, or frequent, an area where they may have an opportunity to access or contact children, but there is no specific child that can be identified as being at risk. Indeed, Túsla may be aware of vulnerable children or families residing in the area but unaware that such an offender is residing in the vicinity.
- 37.6.5. In accordance with paragraph 3.2.4 of *Children First National Guidance* (2011: p.13), any concerns that members of An Garda Síochána have regarding “**a potential risk to children posed by a specific person, even if the children are unidentifiable.**” will be communicated to the Túsla.
- 37.6.6. Where a member of An Garda Síochána becomes aware that a person who poses a risk to the welfare of children is residing in her/his District, a notification will be prepared for the District Officer who will forward the notification to the relevant designated person at Túsla.
- 37.6.7. Where a decision is made by the District Officer in such circumstances **not to notify** Túsla, the directions outlined in section 37.5 above will be strictly applied.

37.7. Domestic Violence

37.7.1. Domestic Violence involves the repeated and systematic commission of certain forms of crime, often against the same person. In cases of domestic violence, even where an alleged offender has been charged and brought before the Courts by An Garda Síochána, the abuse tends to continue, with victims often at elevated risk should the defendant be remanded on bail.

37.7.2. The adverse effects of domestic violence on children's physical, emotional and psychological health have been well documented.

37.7.3. Members encountering domestic violence incidents between persons who have children will refer all such cases to Túsla. Bearing in mind the repeated and systematic nature of domestic violence, notifications will be made to Túsla whether or not the children were present at the scene of the incident at the time that it occurred. It must never be assumed that a domestic violence incident is a once-off isolated event.

37.8. Applications may be made to protect dependent persons in certain cases by a parent, or Túsla, in respect of the various orders available pursuant to the Domestic Violence Act 1996.

37.9. Homeless Children

37.9.1. Túsla are obliged under section 5 of the Child Care Act 1991 to assess and respond to the accommodation needs of homeless children.

37.9.2. When a member of An Garda Síochána encounters a child who is homeless, the child will be referred immediately to Túsla through the usual channels.

37.9.3. Should the circumstances warrant, members should consider the removal of a child to safety pursuant to section 12 of the Child Care Act, 1991. Procedures for taking such an action are outlined in Chapter 41 below.

38. Roles & Responsibilities of An Garda Síochána

- 38.1. The following is a summary of the guidance that relates directly to the Garda/Túsła interface in relation to child protection and welfare. A full copy of *Children First: National Guidance* (2011) is available on the Garda portal and every member should familiarise him/herself with same.
- 38.2. As outlined in *Children First: National Guidance* (2011), An Garda Síochána and Túsła have different functions, powers and methods of working. The specific focus of Túsła is on the welfare of the child and family. The specific focus of An Garda Síochána is on the investigation of complaints and establishing whether a crime has been committed. Joint working between An Garda Síochána and Túsła form an integral part of the child welfare and protection service.
- 38.3. The involvement of An Garda Síochána in cases of child abuse stems from its primary responsibility to protect the community and to bring offenders to justice. Where it is suspected that a crime has been committed, An Garda Síochána will have overall responsibility for the direction of any criminal investigation.
- 38.4. While the primary role of An Garda Síochána in child abuse cases is that of criminal investigation, members should be aware of the potential risk to the welfare of children in all of their dealings with children. Where a member of An Garda Síochána is interacting with a child for any reason, the welfare of that child must always be considered. **Any concerns for a child's welfare will be reported**, through normal channels, to Túsła.
- 38.5. The **early identification** of child welfare concerns may reduce the future need for more serious child protection measures to be taken by either Túsła or An Garda Síochána. In the vast majority of cases, reported child welfare concerns results in Túsła providing support and assistance to the child and her/his family **thereby reducing the potential for abuse** in the future.
- 38.6. **Garda Central Vetting Unit**
- 38.6.1. The Garda Central Vetting Unit (GCVU) provides vetting on behalf of organisations employing personnel to work in a full-time, part-time, voluntary or student placement capacity with children and/or vulnerable adults. The GCVU provides its vetting service for each sector requiring vetting through a sectoral 'central point of contact',

the task of which is to process vetting applications centrally for that sector.

- 38.6.2. The Authorised Signatory is the point of contact appointed in each organisation to forward forms to the GCVU and any disclosures from Gardaí are returned to the Authorised Signatory confidentially, the implications of which can be assessed by prospective employers using a risk management approach.
- 38.6.3. The GCVU does not deal with individual requests for vetting. An individual must make a written application through the organisation to which their area of work is affiliated.
- 38.6.4. Garda vetting is part of good recruitment practice. It is not the role of GCVU to decide on the suitability of any person to work with children and vulnerable adults. Decisions on suitability for recruitment ultimately rest with the recruiting organisation and the results of vetting should form only one component of the recruitment decision.

39. Court Orders issued pursuant to Part IV of the Child Care Act, 1991

- 39.1. Part IV of the Child Care Act, 1991 allows for the making of various orders designed to protect a child who is believed to be in danger. The Courts may order the detention of a child who is deemed to be at risk or who exhibits severe emotional or behavioural difficulties and Special Care Units are provided by the State for this purpose.
- 39.2. The Courts, in issuing such orders, may incorporate a command to the Garda Commissioner which may range from locating and lodging a child (who is not in care) in a named centre to searching for, detaining and returning a child to a relevant centre if the child has absconded from that centre. In addition, the Courts may make an order prohibiting the removal of a child from the jurisdiction without leave of the Court and such orders may command the Garda Commissioner to issue a ports and airports alert. As children who are subject of such orders are invariably deemed to be at extreme risk, it is essential that An Garda Síochána takes immediate and effective measures to secure the children in compliance with the Court orders.
- 39.3. **Order to locate and lodge a child who is not in care in a named centre**
- 39.3.1. In circumstances where a child is not in care and the Court issues an order for the detention of that child in a named centre and that order incorporates a command to

the Garda Commissioner to locate and lodge the child in the named centre, the District Officer in charge of the District **where the child normally resides** will be responsible for the management, monitoring and execution of that order.

39.3.2. In this regard the District Officer is required to implement the following procedures:

- (a) Upon receipt of notification of the making of an order, the District Officer will direct immediate action by her/his working staff to have the order executed. .
- (b) Direct the member in charge of the working unit to fully brief the on-coming unit of the existence of and content of the order, if the order has not been executed at the termination of the tour of duty.
- (c) Direct the member in charge of the working unit to document the steps taken to execute the order and to record the details of the hand-over of the order to the on-coming unit if it has not been executed at the termination of the tour of duty.
- (d) Direct the member in charge of the working unit to notify him/her of the current position of the order at the termination of the members' tour of duty.
- (e) The District Officer will conduct a review of the position regarding the execution of the order if the order has not been executed within 24 hours of the notification of the making of the order. The review will include appropriate liaison with Túsla.
- (f) The District Officer will ensure that all actions in relation to the execution the order are logged and appropriately recorded.
- (g) If the District Officer receives information that indicates the child may be residing outside her/his District, she/he will immediately contact the District Officer in charge of the District where the child is believed to be and ensure that the order is transmitted to that District Officer for execution.
- (h) The District Officer in charge of the District where the child is believed to be will follow the above procedures.
- (i) The procedures as outlined will apply to the District Officer on call for the District in circumstances where the notification of the making of the order is transmitted outside of office hours.

39.3.3. It is important to note that a command to the Garda Commissioner which is contained in a Court order may vary from order to order. Therefore, it is essential that the District Officer satisfies herself/himself of the precise nature of the command by examining the copy of the order. It is not sufficient to rely on the interpretation which may be provided by a third party.

39.4. **Children who abscond from Care**

39.4.1. Where the Courts order the detention of a child deemed to be at risk, the Court will normally incorporate into the said order a command to the Garda Commissioner to search for, detain and return to the relevant centre, any child who absconds or is taken from the centre. If such a command is not incorporated into the order, it may be issued by the Court on notification that the child in question has absconded.

39.4.2. The District Officer in charge of the District **where the centre is located** will be responsible for the implementation of all appropriate measures (in compliance with the command of the Court where such command is contained within the Detention order) to ensure that any child who absconds from a centre is located, detained and returned to the centre. To this end the District Officer will follow the procedures as outlined at (a) – (i) above.

39.4.3. If no such command to locate, detain and return is contained within a Detention order, the District Officer in charge of the District where the centre is located from where a child has absconded will ensure that the procedures as set out in the Missing Children Protocol between An Garda Síochána and Túsla are complied with.

39.5. **Orders prohibiting the removal of a child from the State**

39.5.1. In some instances, where the Courts are dealing with family law matters, an order may be issued by the Court which prohibits the removal of a child from the State. Such orders will normally incorporate a command to the Garda Commissioner to issue a Ports and Airports alert as to the existence of the order. Responsibility for the issuing of such Port and Airport alerts rests with the Inspector-in-charge Communications, Command and Control Centre, Harcourt Square who will ensure that, on receipt of notification of the making of the order, that the relevant District Offices are notified immediately. Once notification of the existence of the order is received by the relevant District Office, the District Officer will ensure that all members of her/his District are made aware of the existence of the order.

39.5.2. Members are reminded of the powers contained in section 37 of the Child Abduction and Enforcement of Custody Orders Act, 1991 which allow a member to detain a child who he/she reasonably suspects is about to be or is being removed from the State in breach of a Court order. The power contained in section 37 of the 1991 Act

extends to circumstances where proceedings for such an order are pending or an application for such an order is about to be made.

40. Section 12 of the Child Care Act 1991 (as amended)

40.1. When members encounter incidents where the removal of a child to safety must be considered, pursuant to section 12 of the Child Care Act 1991 (as amended), two central tenets of the Act of 1991 should be borne in mind:

- That it is generally in the best interests of a child to be brought up in her/his own family, and
- That the welfare of the child is the first and paramount consideration.

A balance must be achieved between those two issues when deciding whether or not to remove a child to safety.

40.2. Section 12 of the Child Care Act 1991 (as amended by section 7 of the Child Care (Amendment) Act 2011) provides that:

(1) Where a member of An Garda Síochána has reasonable grounds for believing that-

- (a) there is an immediate and serious risk to the health or welfare of a child, and
- (b) it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by Túsla under

section 13 or an application for a warrant under section 35,

the member, accompanied by such other persons as may be necessary, may, without warrant, enter (if need be by force) any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) and remove the child to safety.

(2) The provisions of subsection (1) are without prejudice to any other powers exercisable by a member of An Garda Síochána.

(3) Where a child is removed by a member of An Garda Síochána in accordance with subsection (1), the child shall as soon as possible be delivered up to the custody of Túsla.

(4) Where a child is delivered up to the custody of Túsła in accordance with subsection (3), the Túsła board shall, unless it returns the child to the parent having custody of him or a person acting in loco parentis or an order referred to in section 35 has been made in respect of the child, make application for an emergency care order at the next sitting of the District Court held in the same District Court District or, in the event that the next such sitting is not due to be held within three days of the date on which the child is delivered up to the custody of Túsła, at a sitting of the District Court, which has been specially arranged under section 13(4), held within the said three days, and it shall be lawful for Túsła to retain custody of the child pending the hearing of that application.

40.3. The amendment under section 7 of the Child Care (Amendment) Act 2011 introduces the provisions of section 35 of the 1991 Act to ensure that when it is not sufficient for the protection of a child to await the issuing of a warrant pursuant to section 35, a member of An Garda Síochána may invoke the provisions of section 12 of the 1991 Act.

40.4. Section 35 of the 1991 Act is contingent on an Order having been made under Part IV of the Act. Therefore, the effect of the amendment under section 7 of the Act of 2011, from an operational perspective, is to give authority to An Garda Síochána to invoke the provisions of section 12 of the 1991 Act where a member has reasonable grounds for believing that there is an immediate and serious risk to the health or welfare of a child notwithstanding the fact that an Order may be in place regarding that child. In other words, it clarifies that there are no obstacles preventing a member from invoking the provisions of section 12 once the member is satisfied that there are reasonable grounds for believing that there is an immediate and serious risk.

40.5. The decision to remove a child to safety under section 12 of the Act of 1991 (as amended) must not be taken lightly. It is vital that members satisfy themselves that there is an **immediate and serious risk** to the health or welfare of the child(ren) concerned and that it would not be sufficient to await the making of an application by Túsła for an emergency care order under section 13 or an application for a warrant under section 35.

40.6. **Requests by Túsła personnel to invoke section 12 of the Child Care Act 1991**

40.6.1. From time to time, Túsła personnel may form an opinion, usually as a result of an

interaction with a family, that there is an immediate and serious risk to the health or welfare of a child or children. Accordingly, those Túsła personnel may request a member of An Garda Síochána to invoke section 12 of the Act.

40.6.2. While the Garda may base her/his decision on the information provided by Túsła personnel, it is the Garda removing the child(ren) to safety who must be satisfied in her/his own mind that there is an immediate and serious risk to the health and/or welfare of the child(ren) concerned.

40.6.3. The decision will not be taken based the member's belief as to whether or not an application could/should have been made prior to Túsła's request to remove the child, but on the basis that it **would not now be sufficient to await the making of the relevant application** based on the information available at the time that the decision is to be made.

40.6.4. It is the responsibility of An Garda Síochána to ensure that the child's rights (along with those of the child's parents and family) are upheld at the time of the decision as to whether or not the child should be removed to safety pursuant to section 12 of the Act of 1991 (as amended).

40.7. **Reporting & Recording the use of section 12 of the Child Care Act 1991**

40.7.1. It is essential that the member informs Túsła through the usual channels, of any actions taken, by forwarding a [Standard Notification Form](#) as outlined in Chapter 42 below at the earliest opportunity

41. **Protocol for An Garda Síochána – Túsła Liaison**

- 41.1. Effective interagency cooperation has a number of benefits, including:
- ensuring provision of a comprehensive response to all concerns about children. This includes the pooling of resources and skills at all stages of intervention, from initial enquiry to assessment and case management, including early identification and prevention;
 - avoiding gaps in the service response, especially in cases where information might otherwise remain concealed or unknown;
 - providing mutual support for professionals in complex cases.

41.2. An Garda Síochána and Túsla are the key agencies empowered by law to carry out an investigation and assessment of suspected child abuse. Each agency manages the responsibility within its brief and their joint efforts are designed to ensure that the protection of vulnerable children receives priority attention. Their separate and complementary roles require careful understanding if the shared objectives of child protection are to be realised. An Garda Síochána has the additional responsibility of bringing abusers to justice.

41.3. **Designated Personnel**

41.3.1. Each District Officer will appoint a designated District-based Inspector/Sergeant who with a Social Work Team Leader from Túsla will constitute a Liaison Management Team, the functions of which are:

- to consider notifications of suspected child abuse;
- to assign personnel and supervise investigations;
- to review progress in the case.

41.4. **Tracking Systems**

41.4.1. It is important for both An Garda Síochána and Túsla to chart the progress of an investigation into a notified suspicion of child abuse. A standardised Record of [Garda – Túsla Liaison Form](#) should be used to assist managers and other personnel in this task. The adoption of this procedure should ensure accountability in all cases.

41.5. **Notifications by Túsla to An Garda Síochána**

41.5.1. Where Túsla suspects that a child has been or is being physically or sexually abused or wilfully neglected, Túsla have a responsibility to notify An Garda Síochána.

41.5.2. Túsla is not expected to routinely notify suspected cases of emotional abuse or unintentional neglect to An Garda Síochána since the circumstances of such cases may not involve law enforcement issues. Where Túsla personnel have any doubt, they may consult with members of An Garda Síochána.

41.5.3. Members should be aware that the offence of cruelty to children contrary to [section 246 of the Children Act 2001](#) includes the frightening, bullying or threatening of a child and other certain behaviours likely to cause unnecessary suffering or injury to the child's physical, mental or emotional health, or seriously affect her/his physical,

mental or emotional wellbeing.

41.5.4. Túsla must inform the person reporting a suspicion of child abuse that their information will be shared with An Garda Síochána.

41.6. **Procedure when Túsla notify An Garda Síochána**

41.6.1. When a District Officer receives a Standard Notification Form from a Child Care Manager/equivalent designated person, the District Officer will appoint a Garda to the case and immediately inform Túsla Child Care Manager/equivalent designated person of the Garda's name and station.

41.6.2. At the same time, the District Officer will direct the designated Inspector/Sergeant to manage the investigation, monitor its progress and consult with the appointed Túsla manager of the case.

41.6.3. The appointed Garda will make direct contact without delay with Túsla social worker (or other designated person) dealing with the case in order to obtain details.

41.6.4. When contact is established, the designated Garda should make herself/himself available to assist the relevant social worker in completing the Record of [Garda – Túsla Liaison Form](#).

41.6.5. Where contact cannot be established between the designated Garda and the social worker, the matter will revert immediately to the designated Garda Inspector/Sergeant and Túsla Social Work Team Leader of the case for resolution.

41.7. **Notifications by An Garda Síochána to Túsla**

41.7.1. Where a member suspects that a child has been or is being the victim of emotional, physical or sexual abuse or neglect (whether wilful or unintentional), Túsla will be formally notified in accordance with the procedure set out below. It is not necessary for An Garda Síochána to have sufficient evidence to support a criminal prosecution before notifying Túsla.

41.7.2. In cases involving criminal investigation only (eg, the assault of a child by a stranger) and a notification is not warranted, members should contact Túsla where there is need for appropriate counselling and other support services for the victims of assaults.

41.7.3. An Garda Síochána may be involved in investigating a case of child abuse, or a retrospective complaint of abuse, where Túsla is not involved. Where appropriate, An Garda Síochána should seek the advice of Túsla regarding counselling and other support services for victims.

41.8. **Procedure for An Garda Síochána to notify Túsla**

The procedure for An Garda Síochána to notify Túsla of a suspected case of emotional, physical or sexual abuse or neglect of a child is as follows:

41.8.1. It is vital that sufficient information is provided to Túsla at the time of first notification. The investigating member will complete a **Standard Notification Form** along with a report outlining the details of the case and will submit same, immediately through the usual channels, to the District Officer for onward transmission to the Túsla Child Care Manager/ equivalent designated person.

41.8.2. The District Officer will send the **Standard Notification Form** and the accompanying report to the Túsla Child Care Manager/ equivalent designated person. A copy will be retained by the Garda member dealing with the case and by the designated Garda Inspector/Sergeant. Where more than one child is involved, a separate Standard Notification Form should be sent in respect of each child.

41.8.3. On receipt of the notification form, the Túsla Child Care Manager/equivalent designated person has responsibility for arranging to have a social worker (or other designated person) assigned to the case and immediately will notify the Garda Superintendent of the name and location of the designated social worker.

41.8.4. The social worker assigned to the case will make direct contact with the Garda in charge of the case in order to obtain details.

41.8.5. When contact is established, both the investigating Garda and the social worker will commence completion of the Record of [Garda – Túsla Liaison Form](#).

41.8.6. The District Officer will direct the designated Inspector/Sergeant to manage the investigation, monitor its progress and consult with the appointed Túsla manager of the case.

41.8.7. Where contact cannot be established between the designated Garda or Túsla social

worker, the matter will revert immediately to the Túsła Social Work Team Leader and the designated Garda Inspector/Sergeant for resolution.

41.9. **The Liaison Management Team**

41.9.1. The Liaison Management Team – comprising the designated Garda Inspector/Sergeant and the Túsła Social Work Team Leader – will be responsible for ensuring that interagency liaison occurs and that each Standard Notification Form is appropriately processed.

41.10. **Informal consultation**

41.10.1. Where a member has concerns about a child but is unable to establish sufficient grounds for formal notification to Túsła, the member should consult with her/his supervisor, who will in turn consult with Túsła on an informal basis. Such contact is to be actively encouraged in order to protect the welfare of the child concerned.

41.11. **Emergency intervention**

41.11.1. There may be occasions when a member has to take immediate action to protect a child without first notifying Túsła (e.g. invoking [section 12 of the Child Care Act, 1991](#)). It is essential that the member informs Túsła through the usual channels, of any actions taken, by sending the [Standard Notification Form](#) at the earliest opportunity.

41.12. **Investigation of cases**

41.12.1. It is essential that enquiries by An Garda Síochána and Túsła should be coordinated to ensure that:

- the welfare of the child is protected;
- everything possible is done to assist the criminal investigation and protect the available evidence;
- there is a free flow of relevant information between both agencies;
- decisions and actions follow consultation within and between both agencies.

41.12.2. While both organisations conduct separate investigations/ assessments into suspected

child abuse cases, a number of issues arise in the management of inter-agency investigations that require careful consideration by both An Garda Síochána and Túsla.

41.12.3. In cases where a specialist assessment of child sexual abuse is underway, *Children First: National Guidance* (2011) advises Túsla that the early interviewing of the child by An Garda Síochána should be facilitated to ensure that statements may be obtained in a manner least likely to cause stress to the child. Along with Gardaí, Túsla personnel have been trained in specialist interviewing and may be requested to take part in such interviews where required.

41.12.4. Members will keep a written record of decisions taken in relation to the case. This record should be accessible in the absence of the specific Garda member investigating the case. All contacts between An Garda Síochána and Túsla will be recorded. A decision that is made by either Túsla or An Garda Síochána not to proceed must be recorded in detail and explanations recorded as to why this course of action was taken.

41.12.5. It is essential that the designated Garda attend any child protection conferences or strategy meetings to which she/he is invited. An invitation to attend child protection conferences will be sent to the District Officer in order to facilitate the attendance of the designated Garda.

41.13. **Liaison with parents/carers**

41.13.1. Every possible effort should be made to keep the child's parents/carers informed of developments in the case, except where this might place the child at further risk or impede the criminal investigation. It is common practice to invite parents/carers to attend child protection conferences. If this conflicts with the investigative process (eg, one of the parents is a suspect), the matter should be resolved between the relevant case managers, namely the Social Work Team Leader and the designated Garda Inspector/Sergeant.

41.13.2. The views of parents/carers should be sought on the issues to be raised at a child protection conference, so that they can get advice and prepare their representations. All actions in response to concerns about child abuse should be taken in a manner that supports the possibility of families providing safe and nurturing care for their children, now or in the future.

41.13.3. For parents/carers, being asked to participate in, or cooperate with, an investigation into suspected child abuse can provoke powerful emotions, such as anger, fear, shame, guilt or powerlessness. Moreover, parents/carers are usually unaware of the complexity of what is likely to be involved and are unsure of the appropriate rules of behaviour.

41.13.4. Professionals (including Gardaí) need to build trust with families when involved in child abuse investigations/assessments, in so far as it is possible. It may be unrealistic to expect family members who are the subject of complaints of child abuse and neglect to trust the professionals making the enquiries. Being cast in the role of 'the accused' inhibits parents/carers from trying to understand the professionals' point of view. Nevertheless, in many cases a relationship of trust can be established if the professionals involved create the right conditions for its development.

41.13.5. If the child or parent/carer has a communication difficulty, arrangements must be made to help them during any interviews. This may involve a sign language interpreter, large print, tape or braille. For those whose first language is not English, the services of an interpreter should be made available.

41.14. **Investigation of organised abuse**

41.14.1. The investigation of organised abuse requires particularly sensitive cooperation between An Garda Síochána and Túsla. It may involve surveillance work and a higher degree of secrecy than would normally be expected in child protection work. It may be undesirable to share information fully with families in the early stages of investigation since breaches of confidentiality may seriously impede detection.

41.15. **Confidentiality**

41.15.1. It is essential that all information exchanged between An Garda Síochána and Túsla is treated with the utmost confidentiality in order to safeguard the privacy of the children and families concerned and to avoid prejudicing any subsequent legal proceedings.

41.15.2. Regard must be taken of the Freedom of Information Acts, 1997 & 2003 when considering a request for confidentiality. At present, the Act applies to Túsla, but not to An Garda Síochána. In particular, cognisance should be taken of Section 23 of the Act on 'Law Enforcement and Public Safety' when considering concerns about the

confidentiality of information. Túsla records containing references to communications with An Garda Síochána will be considered 'third party' records and, as such, will be referred to the Garda Commissioner when any request for information release under the Freedom of Information Act is being considered.

41.16. **Ongoing liaison**

41.16.1. The designated Garda and Túsla social worker should stay in regular contact and inform each other of developments in the case as they take place and record these on the Record of [Garda – Túsla Liaison Form](#). The link between both agencies should be maintained until the criminal investigation and the prosecution (where applicable) is completed.

41.16.2. Certain aspects of the investigation should be considered by both agencies, including:

- impact of a prosecution on the child victim (see section 5.5.6 in Part I);
- impact of the reported abuse on the child;
- support for child and adult witnesses;
- victim support services.

41.17. **Strategy meeting**

41.17.1. When a reported concern has been assessed by Túsla as valid and it appears that a child is at serious risk and may need immediate protection, a child protection enquiry will be set up by Túsla. It is vital at the outset that Garda members share all available and relevant information with Túsla.

41.17.2. At any point during a child protection enquiry, it may be considered appropriate to convene a strategy meeting with all relevant professionals. This meeting can involve any or all of the professionals involved at either management or case assessment level, depending on the circumstances. It is particularly important to consider this process following preliminary enquiries and the notification of an ongoing child protection concern to the Túsla Child Care Manager/equivalent designated person. It is particularly important that designated members attend such meetings when requested, especially if formal notification procedures are, or have been, invoked.

41.17.3. Strategy meetings have a number of objectives, including:

- to share available information;

- to consider whether immediate action should be taken to protect the child and other children in the same situation;
- to decide if Section 16(1)(b) Criminal Evidence Act, 1992 interviews should take place;
- to consider available legal options;
- to plan early intervention;
- to identify possible sources of protection and support for the child;
- to identify sources of further information;
- to allocate responsibility;
- to agree as to how the remainder of the enquiry will be conducted.

41.17.4. It is vital to the child protection and welfare process that the relevant investigating members are actively involved and the lack of correspondence between the working hours of Túsla and Garda personnel can frustrate such involvement. It is the responsibility of all members to commit themselves to the principles of *Children First* and be as helpful and as flexible as possible in the scheduling of Strategy Meetings. District Officers will ensure that investigating Gardaí are facilitated, as far as is practicable, in attending Strategy Meetings.

41.17.5. It is the responsibility of the Túsla Social Work Team Leader or Social Work Manager to arrange a strategy meeting. However, should a member have particular concerns about a case and no such meeting has been scheduled, the member should report the matter through normal channels, in order that the designated Inspector/Sergeant may request the Social Work Team Leader to convene a meeting. An Garda Síochána should not wait for the social work team leader to convene a meeting where there are particular concerns regarding any specific child protection matter but should make immediate application to Túsla to convene a meeting.

41.17.6. Where a meeting has been requested and not then convened, the designated Inspector/Sergeant will inform the District Officer who will in turn make immediate contact with the Child Care Manager to express the relevant child protection/welfare concerns and again request that a strategy meeting be convened.

42. Special Considerations

Certain child protection concerns that come to the attention of Túsla are of particular relevance to An Garda Síochána.

42.1. **Organised abuse**

42.1.1. Cases of organised abuse comprise only a very small proportion of the child protection concerns that come to the attention of An Garda Síochána or Túsla. Nevertheless, they are complex and require particularly careful handling. Essentially, organised abuse occurs either when one adult moves into an area or institution and systematically entraps children for abusive purposes (mainly sexually) or when two or more adults conspire to similarly abuse children, using inducements (Children First National Guidance, 2011).

42.1.2. Organised abuse can occur in different settings, such as the community, the family or extended family, or an institution.

42.1.3. The following factors are particularly associated with organised abuse:

- Detection can take several years.
- Calculating the number of victims involved can be difficult since many will have moved away from the area. Particular efforts, such as helplines and advertisements, may be required in order to contact victims.
- Victims are often more powerless and vulnerable than those in other abuse cases. Many will have grown up in care.
- Victims may be under particular pressure not to disclose because of threats or feelings of shame and responsibility.
- Some victims may have colluded with abusers to entrap other children and may have gone on to become abusers themselves.
- Families may have unwittingly colluded with the abuse by accepting gifts and friendship from the abuser and encouraging their children to associate with the abuser.

42.1.4. The investigation of organised abuse requires particularly sensitive cooperation between An Garda Síochána and Túsla. It may involve surveillance work and a higher degree of secrecy than would normally be expected in child protection work. It may be undesirable to share information fully with families in the early stages of investigation since breaches of confidentiality may seriously impede detection.

42.2. **Protection of children at risk moving to other jurisdictions**

42.2.1. When a family with children who are considered by An Garda Síochána or Túsla to be at risk are believed to have moved to another jurisdiction, the relevant information should be sent to the appropriate authority in that State. Members becoming aware of such children should notify Túsla, who will make arrangements for the exchange of information as mentioned above.

42.2.2. Members should also immediately inform the appropriate law enforcement agency in the State to which the children have moved. This information will always be transmitted through D/Superintendent Liaison & Protection, Garda Headquarters, who will forward the information via a recognised channel (eg Interpol and Europol).

42.3. **Children at risk migrating to Ireland from another jurisdiction**

42.3.1. When An Garda Síochána or Túsla are informed that children who are considered to be at risk have moved into their area, immediate notification procedures must be followed. If required, a strategy meeting must be arranged between An Garda Síochána and Túsla to review relevant information.

43. **Aide Memoire – Children First Notifications**

43.1. An “Aide Memoire” is available in laminated form to members which is designed to assist investigating members in child protection cases.

43.2. The “Aide Memoire” has been produced to fit neatly into the current Garda notebook. It is formatted as set out below and requires the following to be documented:

43.2.1. **Child Protection/Welfare issues (Is the child safe?)**

The Garda designated to investigate the case will:

- Make direct contact (without delay) with the social worker assigned to the case (Arrange strategy meeting with designated social worker)
- Establish the outcome of Túsla’s child protection assessment (Is the child safe, has the child been seen?)
- Commence completion of the Record of [Garda – Túsla Liaison Form](#). (also

known as the joint action sheet)

- Liaise with the local Validation Unit (Child Sexual Abuse Assessment).

43.2.2. **All matters pertinent to the Garda Investigation**

With the exception of Section 12 Child Care Act, 1991 the Garda role if a crime is reported, or if there are indicators of a crime (e.g. report of non accidental injury) in child protection cases, remains strictly one of crime investigation (See [Code Chapter 33](#) for crime recording). Primary consideration of the investigator should be to minimise the stress involved by the investigation. However, members will also take account of the statutory functions of An Garda Síochána as set out in section 7 of the Garda Síochána Act 2005, amongst which is to vindicate the human rights of each individual.

43.2.3. **Information regarding the Perpetrator(s)**

All relevant information (M.O., description, mannerisms etc) shall be advised to the local Criminal Intelligence Officer.

43.2.4. **Interim Report**

No report should be delayed. Delay can endanger the child, delay can result in loss or damage of evidence (the child may be intimidated or coached) and any delay in the investigation of the case will have to be accounted for when file is transmitted to the Director of Public Prosecutions. Interim report within 10 days.

43.2.5. **Advice**

Where any member experiences difficulties while trying to make contact with Túsla, they will immediately contact their District liaison manager (Sergeant or Inspector).

Appendix A: Legal Basis for Sexual Crime Policy

This section provides a summary of the legal basis governing the investigation of crimes of a sexual nature and suspected child abuse. This section is designed to provide practical guidance to members of An Garda Síochána, so that they are aware of their responsibilities in relation to the investigation of crimes of a sexual nature and suspected child abuse. It will set out the main legal (including human rights) provisions, and give some practical examples, referring to relevant legislation, leading cases and other sources of law, as necessary. It is essential that any action taken by members of An Garda Síochána is only applied in accordance with the law.

Members of An Garda Síochána carrying out their functions must do so in accordance with the:

- 1.1** Constitution of Ireland, 1937,
- 1.2** Irish Statute and Common Law (Appendix A),
- 1.3** European Convention on Human Rights,
- 1.4** Garda Síochána Code of Ethics,
- 1.5** Children First: National Guidance (2011).

Members of An Garda Síochána will have regard to the following:

- 1.1** The European Code of Police Ethics,
- 1.2** The UN Convention on the Rights of the Child.

A list of commonly used offences is provided for at Appendix B.

The function of An Garda Síochána is set out in section 7(1) of the 2005 Act which is to provide policing and security services for the State with the objective of:

- (a) preserving peace and public order,
- (b) protecting life and property,
- (c) vindicating the human rights of each individual,
- (d) protecting the security of the State,

- (e) preventing crime,
- (f) bringing criminals to justice, including by detecting and investigating crime, and
- (g) regulating and controlling road traffic and improving road safety.

Section 7 sets out a general duty to protect life and preserve peace and public order and the investigation of crime. As set out in section 7(1)(c) of the 2005 Act the function of An Garda Síochána is to provide policing and security services for the State with the objective of vindicating the human rights of each individual. Carney J. in *D.P.P. v Bartley*¹ outlined the duties of An Garda Síochána as follows:

*“Where a credible complaint of felony is made to a policeman, he has no discretion under the Common Law not to investigate it and apprehend a named offender. A failure to carry out this duty vigorously constitutes an illegality on the policeman’s part and renders him liable to prosecution on indictment. In **Creagh -v- Gamble** 1887 XXIV L.R.I. p.458, Pallas C.B. said:-*

A person against whom a reasonable suspicion of a felony exists shall be brought to justice. The Peace Officer is not only entitled but bound to arrest him”This principle of the common law still holds good 110 years later. It is an indictable offence at Common Law for a public officer wilfully and without reasonable excuse or justification to neglect to perform a duty imposed on him either by Common Law or Statute.”

In addition to the obligations contained in section 7(1) of the 2005 Act, the 2003 Act, which came into force on 31 December 2003 and which incorporated the ECHR into Irish law, provides that *“every organ of the State shall perform its functions in a manner compatible with the State’s obligations under the Convention provisions.”* An Garda Síochána is an *“organ of the State”* for the purposes of the 2003 Act.

¹ *D.P.P. v Bartley*, unreported, High Court, June 13, 1997.

Section 3 of the 2003 Act obliges An Garda Síochána, as an organ of the State, to perform its functions in a manner compatible with the State's obligations under the Convention provisions. In this regard there are a number of seminal findings of the European Commission on Human Rights and judgments of the European Court of Human Rights that outline clearly the duty placed on the member states. This duty is commonly known as "*the positive obligation*" and once a positive obligation on a member state exists, an "*omission*" by a public authority, or the absence of a legal remedy against another individual, may constitute a violation under the ECHR.

In the judgment of **Barabanshchikov v Russian App. No. 36220/02**, judgment delivered on 8th January, 2009, the Court outlined its views on the obligation to investigate and stated as follows:

"...the State's general duty under Article 1 of the convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention', requires by implication that there should be an effective official investigation. An obligation to investigate is not an obligation of result, but of means. Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events, however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, the identification and punishment of those responsible. That meant that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the facts will risk falling foul of this standard...."

In this respect, all complaints or reports of crimes of a sexual nature and suspected child abuse will be investigated. There can be no justification for a member of An Garda Síochána refusing to take a complaint or a report from a person on the basis that the incident refers to another Division, District or Sub-district. All such complaints or reports must be taken and in circumstances where such complaints or reports are

forwarded to the appropriate Division, District or Sub-district for investigation or attention the complainant shall be informed of this fact. The member taking the complaint or report will provide their name and Station telephone number to the person making the complaint or report. The member of An Garda Síochána taking a complaint or report should give an adequate explanation to the person making the complaint or report as to the procedures to be employed in the processing of that complaint or report.

In addition to the general duty of An Garda Síochána under Article 1 of the ECHR members of An Garda Síochána carrying out their functions shall at all times respect a person's personal rights and her/his dignity as a human being and shall not subject any person to ill-treatment of any kind and therefore the following additional Human Rights principles are of importance:

Constitution of Ireland 1937

Article 40.1 of the Constitution of Ireland provides that "*All citizens shall, as human persons, be held equal before the law*". Article 40.3.1 of the Constitution of Ireland provides that "*The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.*"

The right to bodily integrity was upheld by the Supreme Court in **Ryan v A.G.**² as being one of the unenumerated rights protected by Article 40.3. However, the Supreme Court also stated that the State had the duty of protecting the citizens from dangers to health in a manner compatible with the rights of these citizens.

In **State (c) v Frawley**³ the High Court held that the right to bodily integrity did not just apply to legislation (**Ryan v A.G.**), but also operated to prevent acts or omissions of the Executive which, without justification, would expose the health of a person to risk or danger including persons in prison/custody. Any excessive and non consensual interference with a persons' physical security, which is not authorised by law, will be considered constitutionally impermissible and evidence obtained in an unlawful personal search may be inadmissible in criminal proceedings.

² *Ryan v A.G.* [1965] IR294

³ [1976] IR 365

Article 38.1 prohibits the trial of a person for a criminal offence otherwise than “in due course of law”. In this regard it is incumbent on members of An Garda Síochána to uphold and protect the constitutional rights of both complainants and suspects. Failure to uphold the constitutional rights of suspects is a breach of fair procedures and natural and constitutional justice and will fall foul of the principle of “in due course of law”. The Supreme Court in *D v DPP* [1994] 2 IR 465 at 474 stated that the “*right to fair procedures is superior to the community’s right to prosecute*”.

Excessive delay on the part of the State in commencing or prosecuting proceedings against the accused can be fatal to the accused’s right to a fair trial. In *DPP (Coleman) v Mc Neill* [1999] 1 IR 91 the Supreme Court declared that “*there is a responsibility on anyone having anything to do with prosecuting cases to make sure that they are brought with all due expedition*”. In *DPP v Arthurs* [2000] 2 ILRM 363 at 376 the High Court stated that “... *a necessary corollary of that right [to a speedy or expeditious trial] is that there rests upon the State a duty to ensure that all reasonable steps are taken to ensure a speedy trial is provided. This must necessarily mean conducting the investigation and prosecution in a manner which, in so far as it is reasonably practicable, eliminates unnecessary delay, ...*”

The European Convention on Human Rights

The object and purpose of the ECHR is the protection of individuals’ human rights. The relevant Articles of the ECHR which may be engaged, depending on the circumstances, in relation to investigating crimes of a sexual nature and suspected child abuse are set out below.

Article 3 ECHR – Prohibition of Torture

Article 3 of the ECHR enshrines one of the most fundamental values of a democratic society. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15(2) of the ECHR even in the event of a public emergency threatening the life of the Nation **Ilaşcu v. Moldova and**

Russia;⁴ other authorities include, **Selmouni v France**⁵ and **Labita v Italy**.⁶

Article 3 of the ECHR prohibits ill treatment and provides that “*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*”. The test established by the European Court of Human Rights (ECt.HR) is that of attaining a certain minimum level of severity. The approach is that:

“... *ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration or the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim*” (**Ireland v U.K.**⁷ other authorities include, **Kafkaris v Cyprus**⁸, and **A v. United Kingdom**.⁹

The Court in *Ireland v United Kingdom* held that torture involves suffering of a particular intensity and cruelty, attaching a “*special stigma to deliberate inhuman treatment causing very serious and cruel suffering*”. Inhuman treatment covers at least such treatment as deliberately causing severe mental and physical suffering. Degrading treatment or punishment consists of treatment or punishment which grossly humiliates a person or drives him to act against his will or conscience.

The Court has also deemed treatment to be “degrading” in circumstances where it arouses in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. **Kudła v Poland**¹⁰, **Ilaşcu v. Moldova and Russia**¹¹ and **A v. United Kingdom**.¹²

In considering whether a punishment or treatment was “degrading” within the

⁴ (2005) 40 E.H.R.R. 46.

⁵ (2000) 29 E.H.R.R. 403 at 95.

⁶ App. No.26772/95, April 6, 2000, at 119.

⁷ January 18, 1978, Series A, No. 25; 2 EHRR 25 para. 167.

⁸ App. No.21906/04, February 12, 2008 at 95.

⁹ (2009) 49 E.H.R.R. 29 at 113 para 127.

¹⁰ (2002) 35 E.H.R.R. 11 at 92.

¹¹ At 93 para 425.

¹² A v. United Kingdom

meaning of Article 3, the Court will have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

In **Timurtas v Turkey**,¹³ the European Court of Human Rights stated; “... *where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention.*” In **Ribitsch v Austria**¹⁴ the Court held that: “... *In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.*”

The European Commission on Human Rights (the Commission) found in the case of **Z v United Kingdom**¹⁵ that States are under a positive obligation to take those steps that could reasonably be expected of them to avoid a real and immediate risk of ill treatment contrary to Article 3 of which they knew or ought to have had knowledge, including ill-treatment administered by private individuals.

Article 6 ECHR - Right to a Fair Trial

Article 6 provides that everyone is entitled to a fair and public hearing within a reasonable time and shall be presumed innocent until proved guilty according to law. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

¹³ (2001) 33 EHRR 121.

¹⁴ (1996) 21 EHRR 573.

¹⁵ Application Number 29392/95 (Comm. Rep 10.9.99) para 94.

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The ECt.HR has determined that where criminal proceedings are concerned, Article 6 applies from the moment the individual is “*charged*” with a criminal offence. There must be some formal notification of the accusation but a “*charge*” may be constituted by an official act that carries such an implication.¹⁶ This may be the date of the formal charge by the police,¹⁷ but in a case where the charge is delayed, or subsequent charges are added, it may be the date of a person’s initial arrest, or the date on which the defendant becomes aware that he is being “*seriously investigated*” and that “*immediate consideration*” is being given to the possibility of a prosecution.¹⁸ In circumstances where evidence is obtained as a result of a breach of Article 3 of the ECHR such evidence may be excluded or deemed inadmissible in accordance with the rights guaranteed by Article 6 of the ECHR.

Members must ensure strict compliance with the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 in order to ensure that the pre-trial Article 6 rights of suspects are given effect.

Article 8 ECHR - Right to respect for private and family life

Article 8 of the ECHR provides that everyone has the right to respect for her/his private and family life, home and correspondence. In this respect, complaints or reports made by persons must be afforded an appropriate level of confidentiality in

¹⁶ Corigliano v Italy (1982) 5 E.H.R.R. 334

¹⁷ Ewing v United Kingdom (1984) 10 E.W.R.R. 141.

¹⁸ X v. United Kingdom, App. No. 6728/74; 14 D.R.26; X v. United Kingdom, App. No. 8233/78; 17 D.R. 122.

order to secure the complainant's rights under **Article 8** of the ECHR. Any interference by a member of An Garda Síochána with an individual's right under Article 8 (1) must be justified under Article 8 (2). Article 8(1) of the ECHR provides a right to respect for one's "*private and family life, his home and his correspondence*", subject to certain restrictions as provided for in Article 8(2) that are "*in accordance with law*" and "*necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*". Since this paragraph provides for exceptions to a right guaranteed by the ECHR, it is to be narrowly interpreted (**Klass v Germany (1978) 2 EHRR 214 (para.42)**) and the need for an interference in a given case must be convincingly established (**Funke v France (1993) 46 EHRR 297 (para.55)**). The interference must be (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out; and (c) necessary in a democratic society (that is in pursuit of a pressing social need) and proportionate to the legitimate aim pursued.

Criminal Justice (United Nations Convention Against Torture) Act 2000

The Criminal Justice (United Nations Convention Against Torture) Act, 2000 (the 2000 Act) gives effect to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Irish law. It creates an offence of carrying out an act of torture by public officials and an offence of attempt to commit or conspire to commit the offence of torture. Public official "*includes a person acting in an official capacity*". Torture for the purpose of the 2000 Act means "*an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person*".

Therefore, a member of An Garda Síochána who commits an act of torture or attempts to commit or conspires to commit an act of torture within the meaning of the 2000 Act will be criminally liable.

Children and members of other vulnerable groups

Members of An Garda Síochána should give special consideration to the heightened vulnerabilities of children and members of other vulnerable groups when investigating

crimes of a sexual nature and suspected child abuse. Although not incorporated into domestic law members of An Garda Síochána should have regard to the UN Convention on the Rights of the Child. This Convention identifies four core principles:

- 1.1 The best interests of the child must be paramount (Article 3);
- 1.2 Children have a right to be heard (Articles 12 and 13);
- 1.3 Children have a right not to be discriminated against (Article 2);
- 1.4 The State has a duty to protect children (Article 19).

In particular, the Commission in **Z v United Kingdom**¹⁹ opined that “the protection of children who by reason of their age and vulnerability are not capable of protecting themselves requires not merely that criminal law provides protection against Article 3 of the ECHR but that, additionally, this provision will in appropriate circumstances imply a positive obligation on the authorities to take preventative measure to protect a child who is at risk from another individual. It should be noted in this regard the international recognition accorded to this principle in Article 19 of the United Nations Convention on the Rights of the Child which enjoins States to take all appropriate measures to protect the child from all forms of physical and mental violence, injury or abuse”. This opinion has been endorsed by the European Court of Human Rights²⁰.

Reports to the Garda Síochána Ombudsman Commission

Where the conduct of a member of An Garda Síochána has resulted in the death or serious harm of an individual the matter will be referred to the Garda Síochána Ombudsman Commission (GSOC) pursuant to Section 102(1) of the 2005 Act. Protocols agreed between An Garda Síochána and the GSOC shall be complied with in relation to any such investigations.

Approving authority

This policy has been approved by the Garda Commissioner. No amendments shall be made to the policy except by or with the prior approval of the Commissioner.

¹⁹ Application Number 29392/95 (Comm. Report 10.9.99) para 93.

²⁰ (2002) 34 EHRR 3.

Monitoring and Review

This policy shall be reviewed annually.

Human Rights

Human Rights are integral to all the Garda functions. This is of great significance in relation to the investigation of crimes of a sexual nature and suspected child abuse by any member of An Garda Síochána. The relevant human rights provisions are explained above, which sets out the legal requirements for any member in this regard.

The Constitution and the ECHR are living instruments and they seek to account for changes in society and its values. Therefore, State actions that were considered necessary and proportionate in the past may not be viewed as necessary and proportionate today.

It is recognised within ECHR law that the responsibilities of the police extend not only to refraining from acts which violate individual rights but also to taking positive action to protect these rights and freedoms. It is therefore vitally important that the legal parameters of each of these rights and freedoms must be carefully considered. In carrying out their functions in accordance with this document members of An Garda Síochána shall act with due respect for the personal rights of persons and their dignity as a human being and shall not subject any person to ill-treatment of any kind.

Appendix B: Applicable Legislation

Common Law Offences

Child Care Act 1991
Child Trafficking and Pornography Act, 1998
Children Act 2001
Criminal Evidence Act 1992
Criminal Justice Act 1984 see also Detention and Questioning
Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997
Criminal Justice Act 1984 (Treatment of Persons in custody in Garda Síochána Stations) Regulations 1987 and 2006
Criminal Justice Act 1993
Criminal Justice Act 2006
Criminal Law (Amendment) Act 1885
Criminal Law (Human Trafficking) Act 2008
Criminal Law (Incest Proceedings) Act 1995
Criminal Law (Rape) (Amendment) Act, 1990
Criminal Law (Rape) Act 1981
Criminal Law (Sexual Offences) (Amendment) Act 2007
Criminal Law (Sexual Offences) Act, 1993
Criminal Law (Sexual Offences) Act, 2006
Criminal Law Act 1997
Criminal Law Amendment Act 1935
European Convention on Human Rights Act 2003
Garda Síochána Act 2005
Offences Against the Person Act 1861
Punishment of Incest Act 1908
Sex Offenders Act 2001
Sexual Offences (Jurisdiction) Act 1996
Criminal Justice (Female Genital Mutilation) Act 2012
Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012

Appendix C: Sexual Crime – Relevant Legislation

This section outlines current or historical sexual offences. Under each offence heading is the source of the offence, whether that be common law or a particular statute. The effective dates for each offence are also included along with the relevant penalties (including effective dates where penalties have changed) and advice as to whether or not a power of arrest exists. Some entries include certain elements of the offences concerned to aid investigating members establish the correct offence to be investigated including the relevance of victim gender to each offence.

This section is merely a guide to the law on sexual offences and does not replace legislation. Members should acquaint themselves with the legislation concerned and must always be aware of amendments that may have been made by subsequent statutes.

Rape

- Common Law and section 48 of the Offences Against the Person Act 1861.
- Effective Dates – On any date
- Gender specific – female victim
- Vaginal intercourse only
- Defined by Section 2 Criminal Law (Rape) Act 1981
- Marital exemption in relation to rape was abolished on 18th January 1991
- Max. Penalty – Life Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997.

Buggery

- Common Law and Section 61 Offences Against the Person Act 1861.
- *The Supreme Court (DPP v Judge Devins & anor, [2012] IESC 7) held on 8th February 2012 that the offence of buggery was repealed by the Criminal Law (Sexual Offences) Act 1993 with no saving provisions to allow any future prosecutions for buggery that occurred prior to 1993.*
- Therefore, an arrest for the above-mentioned offence of buggery would be **unlawful**.
- See ‘Rape under Section 4’ below for incidents occurring after 18th January 1991.
- Otherwise, see ‘Indecent Assault upon a Male/Female’.
- Other statutory offences regarding buggery (eg with persons under 17 years and persons who are intellectually disabled, or mentally impaired) are not affected by this case.

Buggery of Persons Under 17 years

- Section 3, Criminal Law (Sexual Offences) Act, 1993
- Buggery of persons under 17 years of age and under 15 years of age
- Effective Dates – from 7th July, 1993 to 2nd June, 2006.
- For incidents prior to 7th July 1993 see Buggery (above)
- Max. Penalty
 - Buggery with U/15 – Life imprisonment
 - Attempt with U/15 – 1st conviction 5 years, 2nd or subsequent 10 years
 - Buggery with U/17 – 1st conviction 5 years, 2nd or subsequent 10 years
 - Attempt with U/17 – 1st conviction 2 years, 2nd or subsequent conviction 5 years.
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (except for an attempt with a person under 17 unless there is a previous conviction for same)

Rape under Section 4

- Section 4, Criminal Law (Rape) (Amendment) Act 1990
- Sexual assault that includes
 - Penetration (however slight) of anus or mouth by penis
 - penetration (however slight) of the vagina by any object held or manipulated by another person (excludes penetration by finger)
- Effective Dates – 18th January 1991 to date
- Not gender specific – male/female victims (except for penetration of the vagina)
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Max. Penalty – Life imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Aggravated Sexual Assault

- Section 3(1), Criminal Law (Rape) (Amendment) Act, 1990
- Sexual assault involving serious violence, threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature
- Effective Dates - 18th January, 1991 to date.
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Max. Penalty – Life Imprisonment.
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Defilement of a Girl under the age of 17 years

- Section 2, Criminal Law Amendment Act 1935
- *Repealed on 2nd June 2006, as defilement of a girl under the age of 15 years (Section 1 of the 1935 Act) was deemed unconstitutional by the Supreme Court on 23rd May 2006.*
- An arrest should not be made for this offence as it would be deemed **unlawful**.

Defilement of a Child under 17 years of age

- Section 3, Criminal Law (Sexual Offences) Act 2006.
- Engage in sexual act –
 - sexual intercourse or buggery
 - act described in section 3 of 1990 Act (Aggravated Sexual Assault)
 - act described in section 4 of 1990 Act (Rape under Section 4)
- If no consent, the offences of rape, aggravated sexual assault, rape under section 4 may still apply
- Effective Dates – from 2nd June, 2006 to date.
- Not gender specific – male or female victims.
- Defence that perpetrator honestly believed that child was over 17 years
- Max. Penalty – Engage in Sexual Act – 2nd June 2006 to 7th March 2007
 - 1st Conviction - 5 years imprisonment (10 years if by a person in authority)
 - Subsequent Conviction – 10 years imprisonment (15 years if by a person in authority)
- Max. Penalty – Attempt to Engage in Sexual Act – 2nd June 2006 to 7th March 2007
 - 1st Conviction - 2 years imprisonment (4 years if by person in authority)
 - Subsequent Conviction – 4 years imprisonment (7 years if by person in authority)
- Max. Penalty – Engage (including attempts) in Sexual Act – 7th March 2007 to date
 - 1st Conviction - 5 years imprisonment (10 years if by a person in authority)
 - Subsequent Conviction – 10 years imprisonment (15 years if by a person in authority)
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (except for attempts prior to 7th March 2007, unless by a person in authority with a previous conviction for same offence).

Gross Indecency with Males under 17 years of age

- Section 4, Criminal Law (Sexual Offences) Act 1993
- Male committing an act of gross indecency with another male under 17 years
- Effective Dates – 7th July 1993 to 2nd June 2006
- Gender specific – male victim, male perpetrator
- Max. Penalty – 2 years Imprisonment
- No power of arrest

Defilement of a Girl under the age of 15 years

- Section 1, Criminal Law Amendment Act 1935
- *Deemed unconstitutional by Supreme Court on 23rd May 2006*
- An arrest for this offence would be **unlawful**.

Defilement of a Child under the age of 15 years

- Section 2, Criminal Law (Sexual Offences) Act 2006
- Engage in sexual act –
 - sexual intercourse or buggery
 - act described in section 3 of 1990 Act (Aggravated Sexual Assault)
 - act described in section 4 of 1990 Act (Rape under Section 4)
- Where there was no consent, the offences of rape, aggravated sexual assault and/or rape under section 4 may still apply
- Effective Dates – From 2nd June 2006 to date.
- Not gender specific – male or female victims
- Defence that perpetrator honestly believed that child was over 15 years
- Max. Penalty – Life Imprisonment (includes attempts)
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Permitting Defilement of Girl under 15/17 years on Premises

- Section 6 Criminal Law Amendment Act, 1885, as amended,
- Allowing on premises – vaginal intercourse with a man
- Effective dates - 1885 to date.
- Max. Penalty
 - Girl under 15 – Life Imprisonment
 - Girl under 17 – 2 years Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (only where girl is under 15 years of age)

Defilement of idiots, imbeciles and feeble-minded females

- Section 4, Criminal Law Amendment Act, 1935
- Vaginal intercourse with a female
- Effective Dates – 28th March 1935 to 7th July 1993
- Vaginal intercourse only
- Max. Penalty – 2 years imprisonment
- No power of arrest

Protection of Mentally Impaired Person (from Sexual Abuse)

- Section 5, Criminal Law (Sexual Offences) Act, 1993
- Sexual intercourse, act of buggery*, gross indecency (with male)
- Effective Dates – from 7th July, 1993 to date.
- Max. Penalty –
 - Sexual Intercourse, Act of Buggery* – 10 years imprisonment
 - Attempt: 1st conviction - 3 years, 2nd or subsequent conviction - 5 years.
 - Gross Indecency with male (including attempts) – 2 years imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 where penalty is 5 years or more.

**Not to be confused with common law offence of Buggery, which is abolished (see above).*

Soliciting or Importuning a Person who is Intellectually Disabled (Mentally Impaired)

- Section 6, Criminal Law (Sexual Offences) Act, 1993 as amended.
- Solicit or importune person who is mentally impaired for purpose of committing act of
- Effective Dates - 7th July, 1993 to 7th March 2007 (summary offence - Max Pen. 12 months)
 - Sexual intercourse with female
 - Act of Buggery*
 - Gross Indecency (with male)
- Effective Dates - 7th March 2007 to date (Indictable – Maximum Penalty 5 years)
 - Sexual intercourse with female
 - Act of Buggery*
 - Gross Indecency (with male)
 - act described in section 2 of 1990 Act (Sexual Assault)
- Not gender specific – depends on the act solicited/importuned
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 from 7th March 2007 to date).

** Not to be confused with common law offence of Buggery, which is abolished (see above).*

Withholding of Information on Offences against Vulnerable Persons

- Section 3 of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. See also section 2 for withholding of information on offences against children.
- Section 1(1) provides definition for ‘vulnerable person’
- Person knows/believes Schedule 2 offence committed
- Fails to disclose information s/he knows/believes may be of material assistance

- Section 4 of Act provides for defences to failure to disclose
- Effective Dates – from 1st August 2012 to date.
- Max Penalty – 3 to 10 years, depending on offence not disclosed - see section 7 of Act
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 unless the offence not disclosed carries a penalty of less than 10 years imprisonment.

Indecent Assault Upon a Female

- Common Law and Section 10 of the Criminal Law (Rape) Act, 1981
- Effective Dates – Until 18th January 1991
- Gender specific – female victims
- Indecent assault upon a female became sexual assault on 18th January 1991
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Max. Penalty
 - 2 years imprisonment from 1861 to 6th June 1981 (5 years for subsequent conviction from 1935)
 - 10 years imprisonment from 6th June 1981 to 18th January 1991
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 for offences committed after 6th June 1981 and prior to that date where there was a previous conviction for same offence.

Indecent Assault Upon a Male

- Common Law and Section 62 Offences Against the Person Act 1861
- Effective Dates – Until 18th January 1991
- Gender specific – male victims
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Max. Penalty – as for indecent assault on a female
- *In S.M v Ireland, High Court 12 July 2007 (unreported), Laffoy J held that a court when imposing a penalty for such an offence must have regard to the penalty for indecent assault on a female in force at the time the indecent assault in the particular case was committed.*
- Indecent assault upon a male became sexual assault on 18th January 1991.

Sexual Assault

- Section 2(2)(a) Criminal Law (Rape) (Amendment) Act, 1990 – as amended by Section 37 Sex Offenders Act 2001
- Effective Dates – 18th January, 1991 to date
- Not gender specific – male or female victims
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Max. Penalty
 - 5 years from 18th January 1991 to 27th September 2001
 - 10 years from 27th September 2001 to date
 - 14 years (victim under 17 years) from 27th September 2001 to date
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Female Genital Mutilation – Within the State

- Section 2(1) of the Criminal Justice (Female Genital Mutilation) Act 2012.
- Person does or attempts to do an act of female genital mutilation.
- Persons not guilty of such offence outlined in subsection (2)
- Effective Dates – from 20th September 2012 to date.
- Max Penalty – 14 years,
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Female Genital Mutilation – Removing a Woman/Girl from the State for purpose of

- Section 3(1) of the Criminal Justice (Female Genital Mutilation) Act 2012.
- Person removes or attempts to remove a girl or woman from the State for purpose of female genital mutilation.
- Persons not guilty of such offence outlined in subsection (2)
- Reasonable inference as to purpose of removal from the State outlined in subsection (3)
- Definition of ‘removal from State’ in subsection (5)
- Effective Dates – from 20th September 2012 to date.
- Max Penalty – 14 years,
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Female Genital Mutilation – Outside the State

- Section 4(1) of the Criminal Justice (Female Genital Mutilation) Act 2012.
- Person does or attempts to do an act of female genital mutilation in a place other than the State, but only if it is done or attempted to be done

- on board an Irish ship within the meaning of section 9, Mercantile Marine Act 1955
- on an aircraft registered in the State, or
- by a person who is a citizen of Ireland or is ordinarily resident in the State, and would constitute an offence in the place in which it is done.
- Persons not guilty of such offence outlined in subsection (2)
- Effective Dates – from 20th September 2012 to date.
- Max Penalty – 14 years,
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Incest – Male having unlawful carnal knowledge of female relative

- Section 1 Punishment of Incest Act, 1908 as amended
- Grandmother, mother, daughter, sister
- Relates only to vaginal sexual intercourse
- Effective Dates - 1908 to date
- Gender specific
- Max. Penalty
 - 7 years from 1908 to 3rd May 1993
 - 20 years from 3rd May 1993 to 5th July 1995
 - Life Imprisonment from 5th July 1995 to date
- Where relative is under 15 years – penalty for defilement of girl/child applies
- Attempt – 2 years imprisonment (deleted since 5th July 1995)
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (not an arrestable offence for an attempt prior to 5th July 1995)

Incest – Female over 17 having unlawful carnal knowledge of male relative

- Section 2 Punishment of Incest Act, 1908 as amended
- Committed by female over 17 years who with consent permits
- Grandfather, father, brother, son
- Relates only to vaginal sexual intercourse
- Effective Dates - 1908 to date
- Gender specific
- Max. Penalty - 7 years
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Procuring Defilement by Threats, Intimidation or False Pretences

- Section 3 Criminal Law Amendment Act, 1885 as amended (sub-section (3) repealed by section 31 N.F.O.A.P.A. from 19th August, 1997)

- Procuring woman or girl for unlawful carnal connection by threats, intimidation or false pretences
- Effective Dates – 1885 to date
- Max. Penalty – Imprisonment not exceeding two (2) years.
- No power of arrest

Soliciting or Importuning (Child) for Purpose of Committing a Sexual Offence.

- Section 6, Criminal Law (Sexual Offences) Act, 1993 as amended.
- Solicit or importune persons for purpose of committing sexual offences below
- Effective Dates - 7th July, 1993 to 7th March 2007 (summary offence, Max. pen. 12 months)
 - Buggery with persons under 17 years
 - Gross Indecency with male under 17 years
 - Defilement of girl under 15 years
- Effective Dates - 8th August 2001 (S.250, Children Act 2001) to 7th March 2007
 - Defilement of girl under age of 17 years added to list of offences
- Effective Dates - 7th March 2007 to date (indictable, Max penalty 5 years)
 - Defilement of child under 17 years
 - Defilement of child under 15 years
 - Sexual Assault of child (under 17 years of age)
- Not gender specific – depends on the act solicited/importuned
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 from 7th March 2007 to date).

Causing or encouraging sexual offence upon child (under 17 years of age)

- Section 249 of the Children Act 2001
- Person having custody, charge, care of a child causes or encourages
 - Sexual intercourse or buggery
 - Seduction of a child
 - Prostitution of a child
 - Sexual Assault on a child
- Deemed to be causing or encouraging where sexual intercourse, buggery, seduction, prostitution or sexual assault has taken place and offender knowingly allows child to consort with or enter/continue employment with a prostitute or keeper of a brothel
- Not gender specific (except for sexual intercourse – female victim)
- Effective Dates – 1st May 2002 to date
- Max. Penalty – 10 years Imprisonment
- Arrestable offence pursuant to Section 4 of the Criminal Law Act 1997

Reckless endangerment of children (under 18 years).

- Section 176 of the Criminal Justice Act 2006
- A person, having authority or control over a child or abuser
- Causing or permitting a child to be placed or left in a situation where there is a substantial risk (or fails to take reasonable steps to protect a child from risk) of
 - Serious harm
 - Sexual abuse (offences in schedule of Sex Offenders Act 2001)
- Effective Dates – 1st August 2006
- Not gender specific
- Max. Penalty – 10 years Imprisonment
- Arrestable offence pursuant to Section 4 of the Criminal Law Act 1997

Withholding of Information on Offences against Children

- Section 2 of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012. See also section 3 for withholding of information on offences against vulnerable persons other than children.
- Person knows/believes Schedule 1 offence committed, and
- Fails to disclose information s/he knows/believes may be of material assistance
- Section 4 of Act provides for defences to failure to disclose
- Effective Dates – from 1st August 2012 to date.
- Max Penalty – 3 to 10 years, depending on offence not disclosed - see section 7 of Act
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 unless the offence not disclosed carries a penalty of less than 10 years imprisonment.

Allowing a child (under 18 years of age) to be in brothel

- Section 248 of the Children Act 2001
- Person having custody, charge, care of a child allows that child
- To frequent or reside in a brothel
- Effective Dates – 1st May 2002 to date
- Not gender specific
- Max. Penalty – 12 months Imprisonment
- Power of Arrest – Section 254 Children Act 2001 (also includes power of search of premises for purpose of arrest)
- No power of detention for proper investigation of offence

Cruelty to children (under 18 years of age).

- Section 246 of the Children Act 2001
- Person having custody, charge, care of a child who has wilfully
 - assaulted
 - ill-treated (includes frightening, bullying, threatening of a child)
 - neglected
 - abandoned or exposed
- a child in a manner likely to
 - cause unnecessary suffering or injury the child's health or
 - seriously affect his or her wellbeing
 - (includes physical, mental or emotional health or well-being)
- Or causes, procures or allows same
- Effective Dates – 1st May 2002 to date
- Not gender specific
- Max. Penalty – 7 years Imprisonment
- Arrestable offence pursuant to Section 4 of the Criminal Law Act 1997

Sexual Exploitation of a Child

- Section 3(2), Child Trafficking & Pornography Act, 1998 (as amended)
- Was called 'using a child' for sexual exploitation until 7th June 2008, now called sexual exploitation of a child. Definition of sexual exploitation has also changed a number of times.
- Child defined by 1998 Act as
 - person under 17 years – 29th July 1998 to 7th June 2008
 - person under 18 years (for Section 3 only) - 7th June 2008 to date
- Effective Dates – from
 - 29th July 1998 to 7th March 2007 (1998 Act)
 - 7th March 2007 to 7th June 2008 (Definition changed by 2007 Act)
 - 7th June 2008 to date (Definition changed by 2008 Act)
- Not gender specific – male or female victims
- Max. Penalty – changes after 7th June 2008
 - 14 years imprisonment – 29th July 1998 to
 - Life imprisonment – 7th June 2008 to date
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Meeting a Child for Purpose of Sexual Exploitation (within State)

- Section 3(2A), Child Trafficking & Pornography Act, 1998 (as amended)
- Meeting, or travelling to meet, a child (within State) for the purpose of sexual exploitation, having previously met or communicated with child 2 or more times
- Child defined by 1998 Act as
 - person under 17 years – 29th July 1998 to 7th June 2008
 - person under 18 years (for this Section only) - 7th June 2008 to date
- Effective Dates - 7th March 2007 to date
- Not gender specific – male or female victims
- Max. Penalty – 14 years imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Meeting a Child for Purpose of Sexual Exploitation (outside State)

- Section 3(2B), Child Trafficking & Pornography Act, 1998 (as amended)
- Meeting, or travelling to meet, a child (outside State) for the purpose of sexual exploitation, having previously met or communicated with child 2 or more times
- Child defined by 1998 Act as
 - person under 17 years – 29th July 1998 to 7th June 2008
 - person under 18 years (for this Section only) - 7th June 2008 to date
- Effective Dates - 7th March 2007 to date
- Not gender specific – male or female victims
- Max. Penalty – 14 years imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Sexual Offences outside the State - Sexual Offences (Jurisdiction) Act 1996

- Complete Act deals with sexual offences committed against children outside the State
- Committed by Irish citizen or person ordinarily resident in the State (at least 12 months)
- Schedule of offences in this State generally associated with child sexual abuse.
- Act done must also be an offence in place (outside State) where it occurred
- Effective Dates – 19th December 1996 to date
- Not gender specific – male or female victims
- Max. Penalty – liable to penalty assigned to principal offence committed
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Trafficking, taking etc of child for purpose of sexual exploitation

- Section 3(1), Child Trafficking & Pornography Act, 1998 (as amended)
- Trafficking for purpose of sexual exploitation
- Definition changed by section 3 Criminal Law (Human Trafficking) Act 2008
- Effective Dates - 29th July 1998 to date (definition changes 7th June 2008)
- Not gender specific – male or female victims
- Max. Penalty – Imprisonment for Life
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Sexual exploitation of child outside the State by Irish citizens

- Section 7(1), Criminal Law (Human Trafficking) Act 2008
- Any offence under Section 3 Child Trafficking & Pornography Act, 1998 (as amended), except subsections (2A) and (2B)
- Committed by Irish citizen or person ordinarily resident in the State (at least 12 months)
- Act does not need to be an offence in place (outside State) where it occurred
- Child defined by 1998 Act as person under 18 years (for Section 3 only)
- Effective Dates - 7th June 2008 to date
- Not gender specific – male or female victims
- Max. Penalty – Imprisonment for Life
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Sexual exploitation of a child (Irish citizen) outside State by another person

- Section 7(1), Criminal Law (Human Trafficking) Act 2008
- Any offence under Section 3 Child Trafficking & Pornography Act, 1998 (as amended), except subsections (2A) and (2B) committed outside the State.
- Perpetrator does not have to be Irish citizen or person ordinarily resident in the State (at least 12 months)
- Child (victim) is an Irish citizen
- Act does not need to be an offence in place (outside State) where it occurred
- Child defined by 1998 Act as person under 18 years (for Section 3 only)
- Effective Dates - 7th June 2008 to date
- Not gender specific – male or female victims
- Max. Penalty – Imprisonment for Life
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Production, distribution, etc. of child pornography

- Section 5, Child Trafficking & Pornography Act, 1998
- To knowingly produce, distribute, print, publish, import, export, sell, show child pornography
- Includes advertising, encouraging, or knowingly causing or facilitating above
- To knowingly possess for purpose of distributing, publishing, exporting, selling or showing
- Child pornography defined by section 2 of 1998 Act
- Effective Dates – 29th July 1998 to date
- Not gender specific – male or female victims
- Max. Penalty – 14 years Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Possession of child pornography

- Section 6, Child Trafficking & Pornography Act, 1998
- To knowingly possess child pornography
- Child pornography defined by section 2 of 1998 Act
- Effective Dates – 29th July 1998 to date
- Not gender specific – male or female victims
- Max. Penalty – 5 years Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Appendix D. Guidelines on the use of Early Evidence Kits

- The kit will be used in all cases where there is going to be a delay between the reported sexual assault and the medical examination.
- If the reported sexual assault occurred more than twenty four (24) hours previously there is no point in taking oral swabs, as semen does not exist in the mouth beyond this time.
- Urine from complainants of Drug Facilitated Sexual Assault will be analysed for rohypnol and other drugs commonly reported in cases of 'date rape' if taken up to seventy (72) hours after the reported assault.
- After explaining the purpose of the kit to the complainant, written consent to the collection of the samples should be obtained.
- Personnel should check the expiry date on the swabs in the kit.
- If the complainant wishes to urinate, a urine sample should be collected at this time. A large container is available in the kit for the collection of urine. This can be decanted into the smaller screw cap container provided.
- A Garda should witness the urine sample being taken. Standing outside the toilet door is deemed adequate for this purpose.
- Swabs should be pre-labelled by the member, with the complainant's name and the site from which the sample was taken.
- If oral sex is reported the swabs should be taken at the earliest opportunity. If the complainant wishes to have a drink, the mouth should be swabbed before a drink is taken. At least three swabs should be taken; an internal mouth swab, a gums/teeth swab and a swab from the lips.
- The internal mouth swab should be taken by rubbing the swab repeatedly across the inside of the cheeks covering the entire inner surface. The teeth/gums swab should be taken by rubbing the swab repeatedly across the inside and outside of all of the teeth and gums. The lips swab should first be moistened with the complainant's saliva by placing it in the mouth and then it should be rubbed repeatedly across the entire surface of the

outside of the lips.

- The information form accompanying the kit must be filled out by the Garda to enable the scientist to interpret any results obtained.
- The urine and/or swabs should then be packed and sealed in the tamper-proof evidence bag provided. This bag should be labelled with the name of the Garda and the date. A record should be kept of the serial number on the evidence bag.
- If/when a medical examination is carried out on the complainant, the medical examiner should be informed that urine and/or oral swabs have already been taken.