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**AN BILLE UM CHIONTÓIRÍ A ATHSHLÁNÚ 2007**  
**REHABILITATION OF OFFENDERS BILL 2007**

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*Mar a tionscnaíodh*  
*As initiated*

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**ARRANGEMENT OF SECTIONS**

Section

1. Interpretation.
  2. Application to have sentence spent.
  3. Effect of having a spent sentence.
  4. Effect of concurrent or consecutive sentences.
  5. Restrictions.
  6. Defamation proceedings.
  7. Powers of the Minister.
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ACTS REFERRED TO

Child Trafficking and Pornography Act 1998  
Sexual Offenders Act 2001

1998, No. 22  
2001, No. 18



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**REHABILITATION OF OFFENDERS BILL 2007**

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# **BILL**

*entitled*

5 AN ACT TO PROVIDE FOR THE REHABILITATION OF  
OFFENDERS AND FOR OFFENCES TO BECOME SPENT  
AFTER A PERIOD OF TIME.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Rehabilitation of Offenders Interpretation.  
10 Act 2007.

(2) In this Act, unless the context otherwise requires—

“court” means any court exercising criminal jurisdiction;

“criminal record”, in relation to a person, means a record of the  
previous convictions of the person for offences;

15 “excluded employment” includes—

- (a) any office, profession, occupation or employment involv-  
ing the care for or supervision of minors or children,
- (b) employment as a member of the Defence Forces,
- (c) employment as a member of An Garda Síochána, and
- 20 (d) such other categories of employment as may be deter-  
mined from time to time by the Minister;

“excluded sentence” is—

- (a) a sentence for a term exceeding thirty months,
- 25 (b) a sentence in relation to any offence against a minor or  
child,
- (c) a sentence for an offence under the Child Trafficking and  
Pornography Act 1998, and
- (d) a sentence for a sexual offence;

“Minister” means the Minister for Justice, Equality and Law Reform;

“rehabilitation period” means—

- (a) in respect of a sentence for a term exceeding six months but not exceeding thirty months, a period of ten years reckonable from the date of the completion of the sentence, 5
- (b) in respect of a sentence not exceeding six months, a period of seven years, reckonable from the date of completion of the sentence,
- (c) in respect of a sentence of any term of imprisonment under *paragraphs (a) or (b) above*, the operation of the whole of which is suspended, a period of five years, reckonable from the date of the end of the term so suspended (but, if the operation of the term is revived by the court, whichever rehabilitation period is appropriate shall apply), and 10 15
- (d) in respect of any disqualification, penalty, fine or prohibition, a period of seven years, reckonable from the date on which the disqualification, penalty, fine or prohibition (as the case may be) ceases or ceased to have effect;

“sentence” means— 20

- (a) any punishment consisting of a deprivation of a person’s liberty (including remission) for a limited period of time imposed by a court, and
- (b) any other order made by a court including any disqualification, penalty, fine, prohibition or order postponing sentence; 25

“sexual offence” has the meaning given to it by the Sexual Offenders Act 2001, as amended;

“spent sentence” means any sentence in respect of which a person has been rehabilitated. 30

(3) This Act shall come into force on such day or days as the Minister may by order appoint.

Application to have sentence spent.

2.—(1) Subject to *subsection (2) below*, where an individual has been convicted, whether before or after the commencement of this Act, of any offence or offences, and the following conditions are satisfied, that is to say— 35

- (a) he did not have imposed on him in respect of that conviction an excluded sentence,
- (b) he has complied with all conditions of the sentence, and
- (c) he has not had a sentence imposed upon him in respect of any offence during the rehabilitation period, 40

such person may make an application to a judge of the court imposing the original sentence for the conviction to be spent.

(2) Such application shall be made on notice to the superintendent of the Garda Síochána of the district in which he or she 45

ordinarily resides or has his or her usual place of abode, and the court may, at its discretion, make or refuse such an order.

5 (3) The said superintendent or other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application.

(4) After the making of the said order, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the sentence and that sentence shall for those purposes be treated as spent from the date of the said order of the court.

10 (5) If the court makes such an order, the court shall cause the Garda Síochána to be notified in writing.

15 **3.—**(1) Subject to the provisions of *section 5* below, a person who has become a rehabilitated person for the purposes of this Act shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction and—

Effect of having a spent sentence.

20 (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent sentence, and

25 (b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to a sentence in respect of which he has been rehabilitated.

30 (2) Subject to the provisions of any order made under *subsection (4)* below, where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—

35 (a) the question shall be treated as not relating to spent sentences or to any circumstances ancillary to spent sentences, and the answer thereto may be framed accordingly, and

40 (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent sentence or any circumstances ancillary to a spent sentence in his answer to the question.

Save that no person convicted of fraud, deceit and an offence of dishonesty in respect of an insurance claim shall be excused from admitting same on any insurance proposal or form.

45 (3) Subject to the provisions of any order made under *subsection (4)* below—

(a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend

to requiring him to disclose a spent sentence or any circumstances ancillary to a spent sentence, and

- (b) a spent sentence, or any failure to disclose a spent sentence, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment, save for excluded employment. 5

(4) The Minister for Justice, Equality and Law Reform may by order— 10

- (a) make such provision as seems to him appropriate for excluding or modifying the application of either or both of *paragraphs (a) and (b) of subsection (2)* above in relation to questions put in such circumstances as may be specified in the order, including the deletion of criminal records held by An Garda Síochána or any other authorised body, 15

- (b) provide for such exceptions from the provisions of *subsection (3)* above as seem to him appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the order. 20

(5) For the purposes of this section and *section 6* below any of the following are circumstances ancillary to a conviction, that is to say:

- (a) the offence or offences which were the subject of that conviction; 25

- (b) the conduct constituting that offence or those offences; and

- (c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence. 30

Effect of concurrent or consecutive sentences.

4.—(1) If a person is or has been sentenced in respect of 2 or more offences and the sentences of imprisonment imposed are consecutive or partly concurrent then the rehabilitation period shall be calculated as if— 35

- (a) in the case of consecutive sentences, the sentence imposed in respect of each of the offences were or had been a sentence equal to the aggregate of those sentences, 40

- (b) in the case of partly concurrent sentences, the sentence imposed in respect of each of the offences were or had been a sentence equal to the aggregate of those sentences after making such deduction as is necessary to ensure that no period of time is counted more than once. 45

(2) The Minister for Justice, Equality and Law Reform may by order substitute different periods or terms for any of the rehabilitation periods described in *section 1* above.

- (a) any right of the President to grant a pardon,
- (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent sentence.

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(2) Nothing in *section 3* above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person’s spent sentence or to circumstances ancillary thereto—

- (a) in any criminal proceedings before a court (including any appeal or reference in a criminal matter),
- (b) in any proceedings relating to adoption or to the guardianship, wardship, custody, care or control of, or access to, any minor or child, or to the provision by any person of accommodation, care or schooling for minors or children,
- (c) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of *section 3(1)*.

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(3) Nothing in *section 3* above shall affect the obligation of a person to reveal any conviction where an application is made for employment in any position involving the care, custody or control of minors or children.

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(4) If at any stage in any proceedings before a court, tribunal or judicial authority the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person’s spent sentence or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of *section 3* above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

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(5) The Minister may by order exclude the application of *section 3* above in relation to any proceedings specified in the order to such extent and for such purposes as may be so specified.

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6.—(1) This section applies to any action for libel or slander begun after the commencement of this Act by a rehabilitated person and founded upon the publication of any matter imputing that the plaintiff has a spent sentence.

Defamation proceedings.

(2) Nothing in *section 2* above shall affect an action to which this section applies where the publication complained of took place before the sentence in question became spent, and the following provisions of this section shall not apply in any such case.

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(3) Subject to *subsections (5) and (6)* below, nothing in *section 3* above shall prevent the defendant in an action to which this section applies from relying on any defence of justification or fair comment

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or privilege which is available to him, or restrict the matters he may establish in support of any such defence.

(4) Without prejudice to the generality of *subsection (3)* above, where in any such action malice is alleged against a defendant who is relying on one of the defences above, nothing in *section 3* above shall restrict the matters he may establish in rebuttal of the allegation. 5

(5) Subject to *subsection (6)* below a defendant in any such action shall not, by virtue of *subsection (3)* above, be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matter published constituted a fair and accurate report of judicial proceedings if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of *section 3* above. 10

(6) *Subsection (3)* above shall apply without the qualifications imposed by *subsection (5)* above in relation to— 15

(a) any report of judicial proceedings contained in any series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, and 20

(b) any report or account of judicial proceedings published for bona fide educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

Powers of the  
Minister.

7.—(1) Any power of the Minister to make an order under any provision of this Act shall be exercisable by statutory instrument, and an order made under any provision of this Act may be varied or revoked by a subsequent order made under that provision. 25

(2) No order shall be made by the Minister under any provision of this Act other than *section 1* above unless a draft of it has been laid before both Houses of the Oireachtas. 30