

Sex Offenders (Amendment) Bill 2021

Bill No. 144 of 2021

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Abstract

The *Sex Offenders (Amendment) Bill 2021* strengthens the management and monitoring of sex offenders in the community. The Bill changes the notification requirements for sex offenders; introduces electronic monitoring of certain sex offenders; provides for the Garda Síochána to disclose information relating to convicted sex offenders, in extenuating circumstances; creates a legislative basis for the assessment and management of risk posed by sex offenders; and provides for other related matters.



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Introduction

On 6 June 2018, the Government approved the drafting and publication of the [General Scheme of the Sex Offenders \(Amendment\) Bill](#).

The General Scheme was examined by the Joint Committee on Justice and Equality, who published their [Report on pre-legislative scrutiny of the General Scheme of the Sex Offenders \(Amendment\) Bill 2018](#) in January 2019. The Digest does not comment in any way on the pre-legislative scrutiny report as it is not possible due to the very short time between the publication of the Bill and Second Stage debate.

The [Sex Offenders \(Amendment\) Bill 2021](#) was published on Friday 12 November 2021 and is scheduled for debate in Dáil Éireann on Tuesday 16 November 2021. This timeframe does not allow the L&RS to analyse the Bill and the wider policy areas covered by the Bill in the depth that it would wish to.

The main features of the Bill are:

- Changes to the notification requirements for sex offenders, including a reduction of the notification period from 7 to 3 days;
- Providing powers to the Garda Síochána to take fingerprints, palm prints and photographs to confirm the identity of the person making a notification;
- Creating a legislative basis for the assessment and management of risk posed by sex offenders across teams involving probation officers, Gardaí and Tusla;
- Providing for the Garda Síochána to disclose information relating to convicted sex offenders, in extenuating circumstances (for example, where there is a serious threat to public safety);
- Providing a power for a court to prohibit a sex offender from working with children or with a vulnerable person;
- Introducing electronic monitoring of certain sex offenders, to assist in ensuring an offender's compliance with a sex offender order or a post-release supervision order; and
- Allowing the Garda Síochána to apply for the discharge and variation of a sex offender order.

A [Bill Briefing](#) page with up-to-date media coverage and other resources is available. The Bill fulfils commitments set out in the Justice Plan 2021 and in the Programme for Government to update the *Sex Offenders Act 2001* to ensure that convicted sex offenders are effectively managed and monitored, and the publication of the Bill is an action in the [Second National Strategy for domestic, sexual and gender-based violence](#) (2016-2021).

It also places the current Sex Offenders Risk and Assessment and Management (SORAM) monitoring process for high-risk offenders on a statutory footing.

Stakeholder commentary on the Bill

The Dublin Rape Crisis Centre (DRCC) has stated that the Bill is “a welcome addition to the protections needed by victims/survivors and the wider public.” DRCC CEO Noeline Blackwell stated:

“The proposals in this new bill to reduce the time within which sex offenders need to notify any change of address and requiring them to furnish ID thus seem like basic requirements. Similarly, strengthening the legal basis to allow courts to ban convicted offenders from working with children and vulnerable adults, and to allow Probation, Garda and Tusla services to work together in a co-ordinated way, creates good management tools.”¹

However, the DRCC also warned that the efficacy of the provisions of the Bill depends largely on the resources provided for these measures.

Dr Margaret Fitzgerald O'Reilly, an academic expert specialising in criminology, penology and criminal justice who engaged with the Oireachtas Joint Committee on Justice during pre-legislative scrutiny of the General Scheme of the Bill, published an article referencing the Bill² on 11 November 2021. The article questioned whether the introduction by the Bill of more punitive measures “is the only way to deal with sex offenders”. Her commentary drew attention to the lack of empirical studies on the efficacy of measures such as electronic tagging, as proposed by the Bill. Additionally, the article cited a recently released annual report by the Sexual Violence Centre Cork,³ which found that almost 9 out of 10 victims of rape or sexual assault knew the perpetrator, while only 13.2 per cent were raped or sexually assaulted by a stranger. Thus, measures such as electronic tagging, monitoring, and publication of information regarding sex offenders should not be relied on as a “silver bullet” in tackling sexual offending.

¹ [‘Welcome update to law managing sex offenders in community’](#), Dublin Rape Crisis Centre, 10 November 2021.

² [‘Is introducing more punitive measures the only way to deal with sex offenders?’](#), *Irish Times*, 11 November, 2021

³ Sexual Violence Centre Cork, [‘2020 Annual Report’](#), 28 October 2021.

Table of provisions

A summary of the Bill's provisions is included in Table 1 below. Some of the provisions of the Bill will not be analysed/commented on further in the Digest.

Table 1 Table of provisions of the Sex Offenders (Amendment) Bill 2021

Section	Title	Effect
1	Short title and commencement	Section 1 provides for the short title and commencement of the Act.
2	Definition	Section 2 states that in the Bill, the "Principal Act" means the Sex Offenders Act 2001
3	Amendment of section 2 of Principal Act	Section 3 amends s. 2 of the Principal Act by substituting the definition of "imprisonment", which is to include detention in the Central Mental Hospital, and by adding definitions for the terms "authorised person", "children detention school", "Commissioner", "probation officer", "Probation Service" and "vulnerable person".
Part 2: Amendment of Principal Act		
4	Amendment of section 3 of Principal Act	Section 4 amends s. 3 of the Principal Act by the substitution of "a vulnerable person" for "mentally impaired" and the deletion of the meaning of "mentally impaired" in subsection (4).
5	Application of amendments made by Sex Offenders (Amendment) Act 2021	Section 5 inserts a new section 3A into the Principal Act. The new section 3A provides for the application of the amendments made by the <i>Sex Offenders (Amendment) Act 2021</i> .
6	Amendment of section 4 of Principal Act	Section 6 amends section 4 of the Principal Act to provide that every Regulation made under the Act must be laid before the Houses of the Oireachtas.
7	Amendment of section 8 of Principal Act	Section 7 amends s.8 of the Principal Act which deals with the period for which person is subject to requirements of notification. The amendment allows the court to determine the period for which a person who is aged under 18 at the time of the commission of the offence is subject to the notification requirements of Part 2. This term must not exceed 5 years.
8	Amendment of section 10 of Principal Act	Section 8 amends s.10 of the Principal Act which deals with notification requirements. The aim is to strengthen the existing notification requirements and will require that an offender must notify Gardaí of certain information within 3 days rather than the current 7 days. The effect is that existing notification requirements re. name and address, change of name or address, and an intention to

Section	Title	Effect
		<p>spend time away from a notified address must be notified to the Gardaí within 3 days.</p> <p>If an offender wants to leave the State for an intended continuous period of 3 days or more then he/she must inform the Gardaí in advance of their leaving and provide the Gardaí with the address of each place they are staying and the date he/she intends to return to the State.</p> <p>If the person, when leaving, did not intend to remain outside the State for a continuous period of 3 days, but does, he/she must so inform the Gardaí within a further 3 days. This notification can be done in writing.</p> <p>If a member of the Gardaí is not satisfied that the person making the notification has a home address, the person must notify the member of where he/she intends to reside that night and must continue to update the member of where he/she intends to spend the night every 3rd day thereafter or as prescribed by the Gardaí until the member is satisfied that he/she has acquired a home address.</p> <p>If an offender who should present at a Garda station but cannot because of a disability (as documented by a medical certificate) then the notification can take at the person's home or any other place.</p>
9	Power of Garda Síochána to take fingerprints, palm prints and photographs of persons subject to requirements of Part	Section 9 of the Bill provides for the power of the Gardaí to take fingerprints, palm prints and photographs of persons subject to the notification requirements. It also provides for the destruction of fingerprints, palm prints and photographs.
10	Amendment of section 12 of Principal Act	<p>Section 10 amends s.12 of the Principal Act. Section 12 of the 2001 Act provides for offences in connection with notification requirements. The Bill proposes to include a new section 2A which states:</p> <p>(2A) A person who—</p> <ul style="list-style-type: none"> (a) refuses to allow his fingerprints, palm prints or photograph to be taken pursuant to section 10A, or (b) fails or refuses, without reasonable excuse, to comply with a requirement under section 10A(2) to attend at a Garda Síochána station named under that section within the time period specified for the purposes of having his or her fingerprints, palm prints or photograph taken, shall be guilty of an offence.

Section	Title	Effect
11	Amendment of section 13 of Principal Act	Section 11 of the Bill amends s.13 of the Principal Act by replacing s.13(2) to reflect the change in the reduction of the notification from 7 to 3 days for offenders who have been convicted outside the State but who at the time of the conviction or thereafter, become resident for a qualifying period in the State.
12	Amendment of section 14 of Principal Act	S.14(5)(c) of the Principal Act is amended by the substitution of “the Probation Service” for “the probation and welfare service (within the meaning of Part 5)”
13	Insertion of Part 2A in Principal Act	<p>Section 13 inserts a new Part 2A into the Principal Act. It allows for the disclosure of identifying information about an offender in particular cases. This could include a name, address and photo. The new sections are:</p> <p>Identifying information on offenders will be disclosed in limited circumstances as set out in the Bill:</p> <ul style="list-style-type: none"> • To a police service or other law enforcement agency outside State (s.14D) • To an individual/s where the offender poses risk of harm (s.14E) • To the public in certain circumstances such as where the offender does not fulfil the notification requirements (s.14G) <p>S.14F deals with where notice of proposed disclosure of information must be given to the relevant offender concerned.</p> <p>S.14H provides that a record of disclosure or publication on the information disclosed about offenders is to be maintained.</p> <p>S.14I deals with the power of the Garda Commissioner to conduct research and publish information</p>
14	Amendment of section 16 of Principal Act	Section 14 amends s.16 of the 2001 Act, which provides for the making of sex offender orders. These are orders of the court that prohibit the respondent from doing one or more things specified in the order. The amendment provides a power for a Garda, not below the rank of inspector, to apply to the court for a sex offender order. The proposed amendment also permits the court to issue a direction in respect of monitoring the respondent’s movements electronically.
15	Insertion of sections 16A to 16C in Principal Act	Section 15 inserts new sections 16A, 16B and 16C into the Principal Act. Section 16 of the Principal Act provides for the making of sex offender orders.

Section	Title	Effect
		<p>The <u>new s.16A</u> provides for monitoring compliance with a sex offender order.</p> <p>The <u>new s.16B</u> provides for evidence that may be given of electronic monitoring under section 16A</p> <p>The <u>new s.16C</u> allows the Minister, with the consent of the Minister for Public Expenditure and Reform, to enter into such arrangements including contractual arrangements, as he or she considers appropriate for the operation of electronic monitoring.</p>
16	Amendment of section 17 of Principal Act	Section 16 amends s.17 of the 2001 Act, which provides for the taking effect of a sex offender order. The Bill provides for a new subsection (1A), which states that provides that the respondent, the Garda Síochána and an authorised person (if responsible for monitoring the respondent's movements electronically) get a copy of the direction and the prohibition in the sex offender order where the court gives a direction.
17	Amendment of section 19 of Principal Act	Section 17 amends s.19 of the 2001 Act, which provides for the discharge or variation of sex offender order. The Bill provides that a court may, on the application of a Garda not below the rank of inspector, may apply to vary or discharge a sex offender order.
18	Amendment of section 25 of Principal Act	Section 18 amends s.25 of the Principal Act by the deletion of the definition of "mentally impaired".
19	Amendment of section 26 of Principal Act	Section 19 deals with a failure to inform an employer, etc., of a sexual offence conviction.
20	Insertion of Part 4A in Principal Act	<p>Section 20 inserts a new Part 4A (with new sections s.26A- 26G) into the Principal Act. Part 4A will allow a court to prohibit sex offenders from working with children and vulnerable adults.</p> <p>S.26A defines certain terms in Part 4A.</p> <p>S.26B provides that this Part is without prejudice to provisions on the post release supervision of offenders under Part 5 and a prohibition may be imposed on an offender subject to such supervision.</p> <p>S.26C will allow the court to determine whether a prohibition against working with children and vulnerable people needs to be imposed on the offender taking into account relevant matters.</p>

Section	Title	Effect
		<p>S.26D will allow the court to impose a prohibition and sets out the permitted duration of a prohibition.</p> <p>S.26E sets out that the court must explain to the offender the effect of decision re. prohibition, the consequences if he/she fails to adhere to the prohibition and that the prohibition order can be varied by the court.</p> <p>S.26F allows a court to discharge or vary the prohibition.</p> <p>S.26G details the penalties for non-compliance with a prohibition – a maximum penalty on summary conviction of a class C fine (a fine not exceeding €2,500) and/or imprisonment for a term not exceeding 12 months or a maximum penalty on indictment of a fine or a term of imprisonment not exceeding 5 years or more.</p> <p>It also sets out the defences available. A conviction under this section does not prevent the probation period continuing to have effect.</p>
21	Amendment of section 27 of Principal Act	Section 21 is a technical and consequential amendment as a result of changes in the Bill. S.27 deals with interpretation for Part 5 of the Act dealing with post-release supervision for sex offenders.
22	Amendment of section 29 of Principal Act	Section 22 is a technical and consequential amendment as a result of changes in the Bill. S.29 deals with the power of a court to impose sentence involving post-release supervision.
23	Amendment of section 30 of Principal Act	Section 23 is a technical and consequential amendment as a result of changes in the Bill. S.30 deals with additional provisions which may be included in sentence involving post-release supervision.
24	Amendment of section 30A of Principal Act	Section 24 is a technical and consequential amendment as a result of changes in the Bill. S.30A deals with the power of a court to amend conditions or include new conditions to post-release supervision.
25	Insertion of sections 30B to 30D in Principal Act	<p>Section 25 of the Bill proposes to insert new sections 30B, 30C and 30D.</p> <p>Section 30 of the 2001 Act provides for additional provisions which may be included in a sentence involving post-release supervision, including the power of the court under s.30A to amend conditions or include new conditions in a sentence involving post-release supervision.</p>

Section	Title	Effect
		<p><u>Proposed s.30B</u>: provides that where a court makes or varies a post-release supervision order that prohibits a respondent who is over the age of 18 from going to, being in or leaving a specific place whether at a particular time or generally, the court can direct that the movements of the respondent be electronically monitored to establish his/her compliance with a post-release supervision order. The respondent will have an electronic monitoring device attached to his or her person for the period specified. The court may direct that an authorised person monitor compliance with the prohibition concerned or the requirements to use an electronic monitoring device.</p> <p><u>Proposed s.30C</u>: provides for the admissibility of documentary evidence in proceedings relating to a breach of an electronic monitoring condition. These provisions are comparable to those provided for in s.16B of the Bill.</p> <p><u>Proposed 30D</u>: allows the Minister, with the consent of the Minister for Public Expenditure and Reform, to enter into such arrangements including contractual arrangements, as he or she considers appropriate for the operation of electronic monitoring. These provisions are similar to those provided for in s.16C of the Bill.</p>
26	Amendment of section 31 of Principal Act	Section 26 amends s. 31 of the Principal Act by the substitution of “probation officer” for “probation and welfare officer”.
27	Amendment of section 33 of Principal Act	Section 27 amends s. 33 of the Principal Act by the substitution of “probation officer” for “probation and welfare officer”.
Part 3: Amendment of Criminal Justice Act 1984		
28	Amendment of section 8A of <i>Criminal Justice Act 1984</i>	Section 28 amends section 8A of the Criminal Justice Act 1984 , which provides for the extension of the retention period under section 8 of the 1984 Act for fingerprints, palm prints and photographs in certain circumstances. The Bill inserts a new paragraph to provide that the fingerprints, palm prints and photographs of a person who is subject to the notification requirements of the <i>Sex Offenders Act 2001</i> be retained in certain circumstances.

Background

Reports on the management of sex offenders

In January 2009 the Department of Justice, Equality and Law Reform published [*The Management of Sex Offenders: A Discussion Document*](#). The Discussion Document examined a number of key issues, such as the management of risk therapeutic interventions, public notification of sex offenders, release regimes, and electronic tagging. The report invited comments and observations from the public and was promoted through the convening of a conference on 26 March 2009. More than 20 submissions were received. The Department published a further report, [*Summary of the Views Received on Discussion Document on the Management of Sex Offenders*](#) (2010), which focused on policy and practice areas including risk assessment, interventions in custody, sex offenders in the community, the courts, victims and legislation.

The 2010 Discussion document included the following comments that are of relevance to the Bill:

- There is a need to engage non-criminal justice bodies including the housing sector in the risk management committees.
The Department's response to this was that it would engage with relevant bodies to see how it could best be achieved.
- The majority view expressed was that the electronic monitoring of sex offenders would be of very limited value although the view was also expressed that it could be of value in a limited number of particular cases as part of a solution.
The Department's response to this was, without making any final decision on the matter, that it would explore further the possibility of making legislative provision for its use in specific circumstances.
- The universal view was against the introduction of any type of law which would allow open public access to the identity of sex offenders. It was felt that publication of the identity of sex offenders is counterproductive and would drive them underground. However the view was expressed that those with a legitimate interest should receive appropriate information and if there was a danger to the public the Gardaí should be able to make the identity of the sex offender known, and that national guidelines should be drawn up to that effect. The question was also raised whether there should be a mechanism for warning potential future victims, if for example an offender enters into a relationship with a person. The Department stated, in response to this, that it was intended to introduce legislative provisions to address this issue.

The view was expressed that notifications under the 2001 Act should be in person and not by letter.

Electronic monitoring

Electronic Monitoring (“EM”), commonly known as ‘electronic tagging’, allows authorities to monitor the location of individuals via an electronic ankle tag. There are two primary types of EM, namely ‘Radio Frequency’⁴ and ‘GPS’⁵ technology. Radio Frequency technology is by far the most commonly used, but many jurisdictions are now exploring the increased use of GPS technology, as well as the use of technology which is a form of ‘hybrid’ between these two.

EM is used extensively across Europe, the Americas and Australia variously as a condition for bail; as part of a community sentence or suspended sentence orders (curfew orders); or to allow for the early release of prisoners (home detention curfews).⁶

Current Irish legislation that provides for electronic monitoring

The [Criminal Justice Act 2006](#) allows for electronic monitoring in two circumstances; as part of a ‘restriction on movement order’ under s.101 of the Act, or as a condition of temporary release, under [s.108](#).

[Section 111](#) of the Act allows the Minister to make regulations specifying the types of electronic device that may be used for this monitoring. The regulations currently in force for this purpose are the [Criminal Justice Act 2006 \(Electronic Monitoring Devices\) Regulations 2010](#). The regulations prescribe three types of monitoring device, each operating by way of a fixed line, radio frequency, satellite or other technology.⁷ As Walsh notes, the application of these monitoring provisions clearly requires the appointment of persons to operate the equipment and monitor the person’s compliance with their release conditions. For this reason, the 2006 Act allows the Minister to make arrangements, including contractual arrangements, for this: “These persons are not conferred with any powers of entry or of the use of force, presumably because the conditions attach only with the consent of the person concerned.”⁸

Section 6B of the [Bail Act 1997](#), inserted by s.11 of the [Criminal Justice Act 2007](#), allows for a person released on bail to have his or her movements electronically monitored. This provision has not yet been commenced “largely because of concerns about how best to operate a system

⁴ A base station is attached to a telephone line and a tag in the form of a bracelet is attached to the person to be monitored. If the bracelet is damaged or moves more than a specified distance (e.g. 20 metres) from the base station, an alert is sent by the telephone line to a central monitoring station. In the UK it is used for Home Detention Curfews for prisoners on early release and for Court Curfew Orders which normally require a person to spend up to 12 hours a day at home for about 90 days. ‘[The Management of Sex Offenders: A Discussion Document](#)’, Department of Justice, 2009.

⁵ GPS based systems show the location of the tag through a satellite based systems. The GPS systems are more expensive. They have been used in the UK to monitor that a person does not enter certain exclusion areas. Ibid.

⁶ Jyoti Belur, Amy Thornton, Lisa Thompson, Matthew Manning, Aiden Sidebottom, Kate Bowers, ‘A systematic review of the effectiveness of the electronic monitoring of offenders’, *Journal of Criminal Justice*, Volume 68, 2020. <https://doi.org/10.1016/j.jcrimjus.2020.101686>

⁷ Walsh, D. (2016), *Walsh on Criminal Procedure*, 2nd ed., Dublin: Round Hall, at 1772.

⁸ Ibid, at 1773.

of electronic monitoring in a way that is sustainable and targeted”⁹. The Department of Justice and Equality formed a Working Group at the end of 2016 to consider how best to implement electronic monitoring. The Working Group has submitted a report to the Department's Management Board.¹⁰

Consent to electronic monitoring by those living with the offender

The requirement that those living with an offender should consent to the use of electronic monitoring is in line with the Council of Europe recommendation on electronic monitoring, which states that if electronic monitoring is to be used after the prison sentence has been served, its duration and intrusiveness shall be carefully defined, in full consideration of its overall impact on former prisoners, their families and third parties.¹¹

Section 25 of the Bill provides that a direction under subsection (1) shall not be given—

- (a) if the sex offender is to reside or remain in a particular place, without the consent of the owner of the place or of an adult person habitually residing there, or, as the case may be, of the person in charge of the place, and
- (b) unless the sex offender agrees to comply with the direction.

Effectiveness of Electronic Monitoring

In assessing the effectiveness of EM, there are several considerations:

- The types of offenders monitored;
- The stage of the criminal process at which it is used;
- Whether it is used alongside other interventions; and
- The policy aims it is intended to achieve. For example whether the policy aim is as an alternative to detention, protection of the public, prevention of reoffending, assisting with reintegration etc.

While EM is widely used, and most European countries are now employing it in some form, evidence for its effectiveness is mixed, and some commentators have suggested that it lacks an evidence base:

⁹ Minister for Justice and Equality, Frances Fitzgerald T.D. Dáil Éireann debate - Wednesday, 8 Feb 2017; [Bail \(Amendment\) Bill 2016: Second Stage](#). Section 7 of the *Criminal Justice Act 2017* amends these existing provisions for the electronic monitoring of persons on bail to facilitate the focused and targeted use of monitoring in appropriate cases. The Act provides that electronic monitoring may be imposed as a bail condition if the prosecution applies to the court for such a condition.

¹⁰ [Electronic Tagging](#) - Dáil Éireann Debate, Tuesday - 5 March 2019

¹¹ Recommendation CM/Rec 2014/4 of the Committee of Ministers to member States on electronic monitoring, at recommendation 25. Available here: <https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+4+on+electronic+monitoring.pdf/c9756d5b-be0e-4c72-b085-745c9199bef4>

“EM lacks an evidence base in England and Wales as it does in Europe generally... Very few empirical studies have been undertaken since it was introduced in England and Wales. Most of the research carried out so far has been undertaken and/or funded by the Home Office/Ministry of Justice...The focus of these studies have been the evaluation of pilots or new uses of EM...Very little independent research has been conducted....”¹²

A systematic review of the effectiveness of EM funded by the UK College of Policing and conducted by academics at University College London found that overall EM was not associated with a significant reduction in re-offending rates.

However, a 2020 systematic review of the effectiveness of the electronic monitoring of offenders¹³ indicated that there were

“statistically significant reductions in recidivism for sex offenders when EM [electronic monitoring] is compared to the alternative of prison and in European settings.”

The above are samples of the current academic literature on the topic and are indicative of the lack of unanimity on the efficacy of electronic monitoring. In 2018, the Irish Penal Reform Trust commented on “the lack of evidence base on the effectiveness of electronic monitoring in reducing reoffending and aiding reintegration and the high cost of implementation of these measures.”¹⁴ This point was recently emphasised by Dr Margaret Fitzgerald O’Reilly in her commentary on the aims of the Bill.¹⁵

Electronic monitoring provisions in the Bill

Sections 14, 15 and 25 provide for electronic monitoring. The Bill provides that:

- Under specified circumstances, the court can direct that the movements of the respondent be electronically monitored to establish his or her compliance with a sex offender order.
- The court may direct that an authorised person monitor compliance with the prohibition concerned or the requirements to use an electronic monitoring device
- Certain forms of evidence relating to a breach of an electronic monitoring condition are to be admissible
- The Minister, with the consent of the Minister for Public Expenditure and Reform, may enter into such arrangements including contractual arrangements, as he or she considers appropriate for the operation of electronic monitoring.

¹² Anthea Hucklesby and Ella Holdsworth, ‘[Electronic Monitoring in England and Wales](#)’, May 2016.

¹³ Jyoti Belur, Amy Thornton, Lisa Tompson, Matthew Manning, Aiden Sidebottom, Kate Bowers, ‘A systematic review of the effectiveness of the electronic monitoring of offenders’, *Journal of Criminal Justice*, Volume 68, 2020. <https://doi.org/10.1016/j.jcrimjus.2020.101686>

¹⁴ ‘[Electronic Monitoring of Sex Offenders Post-Release](#)’, Irish Penal Reform Trust, 08 June, 2018.

¹⁵ ‘[Is introducing more punitive measures the only way to deal with sex offenders?](#)’, *Irish Times*, 11 November, 2021.

Sex Offender Risk Assessment and Management (SORAM)

The Bill places the current Sex Offenders Risk and Assessment and Management (SORAM) monitoring process for high-risk offenders on a statutory footing.¹⁶ SORAM supports enhanced levels of co-operation and co-ordination between key statutory organisations involved in managing the risks posed to the community by convicted sex offenders and in safeguarding the welfare of children.¹⁷ In order to be considered for inclusion in SORAM the sex offender must be under the supervision of the Probation Service. Currently, approximately 15% of sex offenders in the community are being managed through SORAM.

The National SORAM Steering Group comprises of representatives from An Garda Síochána, The Probation Service, Child and Family Agency (Tusla), HSE (Cosc), The Irish Prison Service and Local Authority Housing. The Local SORAM Teams consists of representatives from An Garda Síochána, The Probation Service, Child and Family Agency (Tusla) and Local Authority Housing.

The 28 Local SORAM Teams have responsibility for public protection through the management of the risk posed by sex offenders living in the community. The Local SORAM Teams are supported in their work by the National SORAM Office which is a multi-agency Office made up of the same agencies represented on the Local SORAM Teams.¹⁸

Management and monitoring of sex offenders in Ireland

Upon being convicted of a sex offence, the court will issue the convicted person with a Certificate of Conviction, setting out the length of their sentence and their reporting requirements. The court will also supply a copy of your certificate to the Sex Offender Management and Intelligence Unit (SOMIU).

Reporting requirements

The sexual offences subject to reporting requirements are:

- Rape
- Sexual Assault
- Aggravated Sexual Assault
- Incest
- Defilement of a girl aged under 15
- Defilement of a girl aged between 15 – 17

¹⁶ [‘Monitoring and management of sex offenders strengthened through Bill announced by Minister McEntee’](#), Department of Justice, 10 November 2021. National responsibility for the monitoring and management of sex offenders in Ireland lies with the Sex Offender Managements and Intelligence Unit (SOMIU), a specialist unit of the Gardaí. See [Sex Offender Management and Intelligence Unit \(SOMIU\)](#).

¹⁷ SORAM applies to sex offenders who are subject to Part 2 of the Sex Offenders Act, 2001 and under the supervision of the Probation Service and is operated at both a National and Local. See [Sex Offender Risk Assessment and Management \(SORAM\)](#)

¹⁸ See Mark Wilson, John McCann and Robert Templeton, [‘SORAM: Towards a Multi-agency Model of Sex Offender Risk Assessment and Management’](#), *Irish Probation Journal*, Volume 10, October 2013.

- Other sexual activities involving children or vulnerable persons
- Attempts or assistance in relation to any of the above

The offender must notify the Gardaí of:

- Their name, date of birth and home address within 7 days of becoming subject to the requirements. (This normally means within 7 days of being released from prison).
- Any change to their name or home address within 7 days of the change.
- Any plans to live somewhere else in Ireland or to leave Ireland for more than 7 days. If they plan to do this, they must provide the Gardaí with the address they will be staying at.

The duration of the requirement to notify the Gardai is as follows:

- Indefinitely if were sentenced to life imprisonment or to a term of more than 2 years
- For 10 years if the term of imprisonment was for between 6 months and 2 years (5 years if the offender was aged under 18)
- For 7 years if the sentence was for less than 6 months (3.5 years if the offender was aged under 18)
- For 5 years if the sentence imposed was suspended or if no prison sentence was imposed (2.5 years if the offender was aged under 18)

Post-release supervision order

If a person is convicted of certain sexual offences, the court will consider whether to impose a sentence with post-release supervision, which is supervised by the Probation Service. Post-release supervision means that an offender is monitored when they are released from prison to ensure that they comply with the conditions of a post-release supervision order.

The court can include specific conditions in the supervision order. For example they can:

- Prohibit the sex offender from attending certain places, such as schools, sports-clubs and play-grounds
- Require that the sex offender get psychological counselling or other appropriate treatment during the period of supervision

Sex offenders orders

If a member of the Gardaí (not below the rank of Chief Superintendent) has reasonable cause to consider that a sex offender under supervision in the community poses a threat to public safety, they can apply to the Circuit Court for an order to be imposed preventing the offender from doing certain things. The terms of each sex offender order depends on the evidence given to the court by the Chief Superintendent.

The Gardaí apply for sex offender orders and ensure that offenders comply with these orders. If a sex offender order is in place, the offender is also subject to the notification requirements set out in Part 2 of the *Sex Offenders Act 2001*.

The Court can vary or cancel the order if it is satisfied that the order is no longer required to protect the public from serious harm or is causing an injustice by being in effect.

Principal provisions of the Bill

The taking of fingerprints, palm prints and photographs of persons subject to notification requirements

Section 9 of the Bill provides for the power of the Gardaí to take fingerprints, palm prints and photographs of persons subject to the notification requirements. It also provides for the destruction of fingerprints, palm prints and photographs. The Bill proposes to add a new section 10A into the Principal Act. Section 10 of the Principal Act provides for notification requirements placed on the offenders to notify the Gardaí of their name and address.

The new s.10A provides that a member of the Garda Síochána may, at any convenient place, take the fingerprints, palm prints or photograph of a person who is subject to notification requirements, within 3 days of the relevant date or the date of the giving of a notification.

Additionally, a member of the Garda Síochána not below the rank of sergeant may require, in writing, that person to attend, within 3 days of the relevant date or the date of the giving of a notification at a named Garda Síochána station for the purpose of having his or her fingerprints, palm prints or photograph taken.

Where a person has made it impracticable for his or her fingerprints, palm prints or photograph to be taken within the period of 3 days, a Garda may require that person to attend a named Garda station a specified day for the purpose of having his or her fingerprints, palm prints or photograph taken.

A fingerprint, palm print or photograph of a person taken pursuant to a requirement under this section shall, if not previously destroyed, be destroyed either no later than 3 months after the date it was taken or not later than 3 months from the date on which the person ceases to be subject to the requirements of this Part. Copies of or records relating to the material to be destroyed shall also be destroyed.

Section 10 amends section 12 of the Principal Act. Section 12 of the 2001 Act provides for offences in connection with notification requirements. The Bill proposes to include a new section 2A which states:

(2A) A person who—

- (a) refuses to allow his fingerprints, palm prints or photograph to be taken pursuant to section 10A, or
- (b) fails or refuses, without reasonable excuse, to comply with a requirement under section 10A(2) to attend at a Garda Síochána station named under that section within the time period specified for the purposes of having his or her fingerprints, palm prints or photograph taken, shall be guilty of an offence.

Section 28 amends section 8A of the [Criminal Justice Act 1984](#), which provides for the extension of the retention period under section 8 of the 1984 Act for fingerprints, palm prints and photographs in certain circumstances. The Bill inserts a new paragraph to provide that the fingerprints, palm prints and photographs of a person who is subject to the notification requirements of the *Sex Offenders Act 2001* be retained in certain circumstances.

Electronic monitoring and sex offender orders

Section 14 amends s.16 of the 2001 Act, which provides for the making of sex offender orders. These are orders of the court that prohibit the respondent from doing one or more things specified in the order. The amendment provides a power for a Garda, not below the rank of inspector, to apply to the court for a sex offender order. The proposed amendment also permits the court to issue a direction in respect of monitoring the respondent's movements electronically.

Section 15 inserts new sections 16A, 16B and 16C into the [Sex Offenders Act 2001](#). Section 16 of the 2001 Act provides for the making of sex offender orders.

Proposed s.16A: Monitoring compliance with a sex offender order

The new section 16A provides that where a respondent who is the subject of a sex offender order who is over the age of 18, and is prohibited from going to, being in or leaving a specific place whether at a particular time or generally, the court can direct that the movements of the respondent be electronically monitored to establish his/her compliance with a sex offender order. The respondent will have an electronic monitoring device attached to his or her person for the period specified. The court may direct that an authorised person monitor compliance with the prohibition concerned or the requirements to use an electronic monitoring device.

Proposed s.16B: Evidence of electronic monitoring under section 16A

The new s.16B provides that where a person who is subject to electronic monitoring, evidence of that person's

(a) presence or absence in or from a particular place at a particular time, or

(b) compliance or non-compliance with a direction

Evidence may be given by the production of the following:

(i) a statement purporting to be generated automatically or otherwise by a prescribed device by which the respondent's whereabouts were electronically monitored;

(ii) a certificate—

(I) that the statement relates to the whereabouts of the respondent at the dates and times shown in it, and

(II) purporting to be signed by an authorised person who is responsible for monitoring electronically the respondent's compliance with a prohibition in a sex offender order that prohibits him or her from going to, being in or leaving a specific place or a direction under section 16A(1).

Proposed s.16C: Arrangements for electronic monitoring under section 16A

The new section 16C allows the Minister, with the consent of the Minister for Public Expenditure and Reform, to enter into such arrangements including contractual arrangements, as he or she considers appropriate for the operation of electronic monitoring.

Section 16 amends s.17 of the 2001 Act, which provides for the taking effect of a sex offender order. The Bill provides for a new subsection (1A), which states that provides that the respondent, the Garda Síochána and an authorised person (if responsible for monitoring the respondent's

movements electronically) get a copy of the direction and the prohibition in the sex offender order where the court gives a direction.

Section 17 amends s.19 of the 2001 Act, which provides for the discharge or variation of sex offender order. The Bill provides that a court may, on the application of a Garda not below the rank of inspector, may apply to vary or discharge a sex offender order.

Section 25 of the Bill proposes to insert new sections 30B, 30C and 30D in the 2001 Act.

Section 30 of the 2001 Act provides for additional provisions which may be included in a sentence involving post-release supervision, including the power of the court under s.30A to amend conditions or include new conditions in a sentence involving post-release supervision.

Proposed s.30B: provides that a where a court makes or varies a post-release supervision order that prohibits a respondent who is over the age of 18 from going to, being in or leaving a specific place whether at a particular time or generally, the court can direct that the movements of the respondent be electronically monitored to establish his/her compliance with a post-release supervision order. The respondent will have an electronic monitoring device attached to his or her person for the period specified. The court may direct that an authorised person monitor compliance with the prohibition concerned or the requirements to use an electronic monitoring device.

Proposed s.30C: provides for the admissibility of documentary evidence in proceedings relating to a breach of an electronic monitoring condition. These provisions are comparable to those provided for in s.16B of the Bill.

Proposed 30D: allows the Minister, with the consent of the Minister for Public Expenditure and Reform, to enter into such arrangements including contractual arrangements, as he or she considers appropriate for the operation of electronic monitoring. These provisions are similar to those provided for in s.16C of the Bill.

Section 26 of the Bill amends section 31 of the 2001 Act by the substitution of “probation officer” for “probation and welfare officer”.

Section 27 of the Bill amends section 33 of the 2001 Act by the substitution of “probation officer” for “probation and welfare officer”.

Notification requirement of sex offenders following release

Part 2 of the *Sexual Offenders Act 2001* sets out which people convicted of a sexual offence must notify and continue to notify the Gardaí of their residence, any change in their residence and intentions to move to go abroad. Although the term ‘sex offender register’ is commonly used there is no such legally defined register under Irish law.

The following sexual offences¹⁹ are currently subject to reporting requirements under the *Sexual Offenders Act 2001*:

¹⁹ The Bill does not include new offences which must be notified.

- Sexual Assault
- Rape
- Aggravated Sexual Assault
- Incest (including by a female aged over 17)
- Defilement of a girl aged under 15
- Defilement of a girl aged between 15 – 17
- Other sexual activities involving children or vulnerable persons
- Attempts or assistance in relation to any of the above

The Act does not apply in cases of defilement of a child aged under 17 years if: the victim is aged between 15-17 years of age when the offence takes place; and the person guilty of the offence is less than 3 years older than the victim. This aims to ensure the voluntary sexual activity between people of a similar age does not result in sexual offences conviction.

What information needs to be provided?

A person who is subject to notification requirements must notify to the Garda Síochána:

- a) his or her name and, where he or she also uses one or more other names, each of those names, and
- b) his or her home address.

A person who is subject to those requirements must also, before the end of the period of 7 days notify:

- a) the person's using a name which is not the name, or one of the names, last previously notified by him or her to the Garda Síochána under this section,
- b) any change of his or her home address,
- c) the person's having resided or stayed, for a qualifying period, at any place in the State, the address of which has not been notified to the Garda Síochána under this section as being his or her current home address, or
- d) the person's returning to an address in the State, having, immediately prior to such return, been outside the State for a continuous period of 7 days or more.

The offender must notify that name, the effect of that change, the address of that place or, as the case may be, the fact of that return to the Garda Síochána.

If a person who is subject to the requirements of Part 2 intends to leave the State for a continuous period of 7 days or more he or she must notify the Garda Síochána of that intention and, if known, the address of the place outside the State he or she intends to reside or stay at.

If a person who is subject to the requirements of Part 2 is outside the State for a continuous period of 7 days or more and did not intend, on leaving the State, to be outside the State for such a continuous period, the person shall, subject to subsection (5), notify the Garda Síochána, before the expiry of a further period of 7 days, reckoned from the 7th day that he or she is so outside the State, of that fact and the address of the place at which he or she is residing or staying outside the State.

How long does an offender have to keep the Gardaí notified of their whereabouts?

When a person is convicted of a sexual offence s/he is provided with a certificate of conviction detailing the length of your sentence and any reporting requirements on release. This information is also given to the Sex Offender Management and Intelligence Unit (SOMIU).

This notification requirement lasts:

- Indefinitely for a person were sentenced to life imprisonment or to a term of more than 2 years;
- For 10 years if the term of imprisonment was for between 6 months and 2 years (5 years if the offender was aged under 18);
- For 7 years if the sentence was for less than 6 months (3.5 years if the offender was aged under 18); or
- For 5 years if the sentence imposed was suspended or if no prison sentence was imposed (2.5 years if the offender was aged under 18).

It is possible to apply to the Circuit Court to try to get the notification requirements removed but this can only be done after 10 years.

Changes to notification periods in the Bill

Currently an offender has 7 days to notify the Gardaí of the required information under Part 2 of the *Sex Offender Act 2001*.

Section 8 amends s.10 of the Principal Act which deals with notification requirements. The aim is to strengthen the existing notification requirements and will require that an offender must notify Gardaí of certain information within 3 days rather than the current 7 days. The effect is that existing notification requirements re. name and address, change of name or address, and an intention to spend time away from a notified address must be notified to the Gardaí within 3 days.

If an offender wants to leave the State for an intended continuous period of 3 days or more then he/she must inform the Gardaí in advance of their leaving and provide the Gardaí with the address of each place they are staying and the date he/she intends to return to the State.

If the person, when leaving, did not intend to remain outside the State for a continuous period of 3 days, but does, he/she must so inform the Gardaí within a further 3 days. This notification can be done in writing.

If a member of the Gardaí is not satisfied that the person making the notification has a home address, the person must notify the member of where he/she intends to reside that night and must continue to update the member of where he/she intends to spend the night every 3rd day thereafter or as prescribed by the Gardaí until the member is satisfied that he/she has acquired a home address.

If an offender who should present at a Garda station but cannot because of a disability (as documented by a medical certificate) then the notification can take at the person's home or any other place.

Prohibition against working with children or vulnerable persons

Section 18 of the Bill amends s.25 of the Principal Act and deletes the definition of “mentally impaired”. Section 4 of the Bill inserts a new definition of ‘vulnerable person’ into the *Sex Offenders Act 2001*.

A vulnerable person is defined as

“a person, other than a child, whose capacity to guard himself or herself against violence, exploitation or abuse, whether physical, sexual or emotional, by another person is significantly impaired through— (a) a physical disability, illness or injury, (b) a disorder of the mind, whether as a result of mental illness or dementia, or (c) an intellectual disability.”

Section 20 of the Bill inserts a new Part 4A into the Principal Act. A person who has been imprisoned for a sexual offence may be subject to a prohibition from working with children or with vulnerable persons. Section 20 inserts a new Part 4A (with new sections s.26A- 26G) into the Principal Act.

S.26A defines certain terms in Part 4A.

S.26B provides that this Part is without prejudice to provisions on the post release supervision of offenders under Part 5 and a prohibition may be imposed on an offender subject to such supervision.

S.26C will allow the court hearing a sexual offences trial to determine whether a prohibition against working with children and vulnerable people needs to be imposed on the offender when convicted, taking into account relevant matters. These matters include the need to protect children or vulnerable persons from serious harm from the offender, and the need to prevent the commission by the applicable offender of subsequent sexual offences.

S.26D will allow the court to impose a prohibition and sets out the permitted duration of a prohibition. A court may, where it is satisfied that it is necessary to do so to protect children or vulnerable persons from serious harm from the applicable offender, impose on an applicable offender in respect of the sexual offence concerned a sentence including a prohibition. This sentence is made up of:

- (a) the imposition of a sentence of imprisonment for a specified term (whether in addition to the imposition of a fine or not); and
- b) a provision that during a specified period (‘the prohibition period’) commencing on the prohibition commencement date, the offender shall be subject to the prohibition.

The aggregate of the sentence of imprisonment and the prohibition period must not exceed the duration of the maximum term of imprisonment that may be imposed in respect of the sexual offence concerned. The court may, when imposing a sentence including a prohibition, specify a particular type or category of relevant work to which the prohibition applies.

S.26E sets out that the court must explain to the offender the effect of decision re. prohibition, the consequences if he/she fails to adhere to the prohibition and that the prohibition order can be varied by the court.

S.26F allows a court to discharge or vary the prohibition.

S.26G details the penalties for non-compliance with a prohibition – a maximum penalty on summary conviction of a class C fine (a fine not exceeding €2,500) and/or imprisonment for a term

not exceeding 12 months or a maximum penalty on indictment of a fine or a term of imprisonment not exceeding 5 years or more.

It also sets out the defences available. A conviction under this section does not prevent the probation period continuing to have effect.

Risk assessment and management team

Section 13 of the Bill inserts a new Part 2A into the *Sex Offenders Act 2001*. This includes legislating for a risk assessment and management team for sex offenders.

A new Section 14B of the *Sex Offenders Act 2001* will provide that a member of the Garda Síochána not below the rank of inspector and a probation officer not below the grade known as Senior Probation Officer can established a risk assessment and management team for an offender when they are satisfied that it is necessary to do so. The team will carry out :

- (a) the full and proper assessment of—
 - (i) the risk of harm posed by the relevant offender to the public or a member of the public, and
 - (ii) how that risk might be managed, and
- (b) the management of that risk.

A risk assessment and management team will be made up of a representative of the Garda Síochána, being a member not below the rank of inspector, a representative of the Probation Service, being a probation officer not below the grade known as Senior Probation Officer, and any of the following that the Garda and probation office consider appropriate having regard to the expertise required to assess the risk of harm posed by the relevant offender, and to manage that risk effectively:

- (i) a representative of the Child and Family Agency;
- (ii) a representative of the Health Service Executive;
- (iii) a representative of the Irish Prison Service (being the prison service of the Department of Justice, which is charged with the management of prisons);
- (iv) a representative of any children detention school in which an offender was detained;
- (v) a representative of a housing authority;
- (vi) a representative of such other organisations or bodies as may be prescribed.

A member of a risk assessment and management team may share with the other members of the team any relevant information relating to the relevant offender concerned that is necessary for the purpose of accurately and effectively assessing or managing the risk of harm posed by the relevant offender. A member of a risk assessment and management team may share with the organisation or body which he or she represents on the team any relevant information relating to the relevant offender concerned available to the team that is necessary for the purpose of accurately and effectively assessing or managing the risk of harm posed by the relevant offender. The risk assessment and management team may, for the purposes of the performance of its functions, consult with such persons as appear to it to be expert or knowledgeable in the assessment and management of the risk of harm posed by relevant offenders or by the relevant offender concerned. Information shared by a member of a risk assessment and management team under this section must not be disclosed to any other person or body except in so far as

information can be disclosed in accordance with this section or sections 14D or 14E explored below.

Disclosing identifying information about an offender

A new Section 14E in the Principal Act will allow the disclosure of identifying information about a sex offender in particular circumstances. It does not mean that information about offenders will be available to the general public on request - a person will not be given the names or addresses of offenders in their area as standard practice.

Identifying information on offenders will be disclosed in limited circumstances as set out in the Bill:

- To a police service or other law enforcement agency outside State (s.14D)
- To an individual/s where the offender poses risk of harm (s.14E)
- To the public in certain circumstances such as where the offender does not fulfil the notification requirements (s.14G)

Disclosure of information to a police service or other law enforcement agency outside State

The Garda Commissioner can enter into a written agreement with a police service or other law enforcement agency outside of the State for the reciprocal exchange of information relating to the risk of harm posed by:

- (a) relevant offenders, in circumstances where such offenders travel, or intend to travel, to the other state, and
- (b) offenders equivalent to relevant offenders under the law of the other state, where such offenders travel, or intend to travel, to the State.

For example, it could be used where an Irish person is being released from a UK prison after serving a sentence for a sexual offence and is intending to return home to Ireland. Any information shared about an offender can only be used for purposes

Disclosure of an individual/s where the offender poses risk of harm

Section 14E will allow a member of the Garda Síochána not below the rank of inspector to authorise the release of the following information re. an offender:

- (a) the name of the relevant offender;
- (b) the address at which the relevant offender is residing or staying;
- (c) the nature of the sexual offence of which the relevant offender was convicted;
- (d) the level of risk posed by the relevant offender to the public or a member of the public; (
- e) such other information as the member considers necessary to avoid, mitigate or manage the risk.

This information will only be released where he or she is satisfied that there is a risk of harm to the public, or a member of the public, due to the commission by a relevant offender of a sexual offence. The information may only be disclosed to persons in respect of whom the disclosure is necessary in order to prevent suspected harm.

The disclosure of the information can only be authorised where the Garda concerned is satisfied that such disclosure is unlikely to result in—

- public disorder;
- physical harm to a person;
- damage to property; or
- intimidation of, or threats to, a person.

However, where the Garda believes that the risk of harm to the public or a member of the public is greater than the risk of any harm to public disorder, physical harm to a person; damage to property; or intimidation or threats to a person, then the information can be disclosed.

The Garda concerned can specify the purpose for which the information may be used by the person to whom it is being disclosed, or impose such conditions relating to the further disclosure of the information. The Bill does not contain an obligation to ensure that the person/s with whom the information is shared do not share this information further. Before disclosing information about an offender the Garda can have regard to any assessment by a risk assessment and management team of the risk of harm posed by the relevant offender, and any other information or material that the member considers of relevance.

Letting the offender know about the planned disclosure

A Garda must generally inform an offender about a proposed disclosure of information about them and advise the offender that he/she is entitled to make a written submission re. whether the disclosure should be made within 5 days (or another time period that can be specified by the Garda where he or she considers it appropriate in the circumstances. The Garda will provide (i) the information that is proposed to be disclosed, and (ii) the reasons for making such disclosure unless doing so would undermine the purpose of the disclosure or would be prejudicial to the assessment and management of the risk of harm posed by the offender.

The obligation to give notice of a proposed disclosure is not necessary where the relevant offender has consented to the disclosure concerned, where offender cannot be located (after reasonable efforts have been made to do so), or where the Garda Síochána is satisfied that there is an immediate need to make the disclosure concerned in order to prevent harm to the public or a member of the public.

Publication of information in certain circumstances

A new s.14G to be inserted into the Principal Act allows for a more general disclosure of identifying information where a relevant offender does comply with notification requirements. Where an offender has not complied with a requirement necessary under Part 2 (obligations of sex offenders to notify certain information) of the Principal Act and the offender's whereabouts are unknown to the Garda Síochána then a member not below the rank of inspector can authorise the publication of the following information:

(a) any of the following in relation to the offender:

- (i) his or her name;
- (ii) his or her address;
- (iii) a description of him or her;

- (iv) his or her age;
- (v) a photograph of him or her;
- (vi) details of any distinguishing feature;

(b) the fact that the offender is a relevant offender;

(c) where available, information concerning the risk of harm posed by the offender or any other information which would assist in locating the offender or protecting the public, or a member of the public, from harm.

Information published under this section should be limited to information necessary to locate the offender or to protect the public, or a member of the public, from harm.

Where a member of the Garda Síochána makes a decision to disclose information under section 14D or 14E, or to publish information under section 14G, the member must make and maintain a record of the decision made to include (among other requirements):

- (a) the reasons for making the decision,
- (b) the information which is disclosed or published under this Part,
- (c) in relation to information disclosed under section 14D or 14E, the name and address of the person to whom information is disclosed under this Part, and
- d) in relation to information published under section 14G, the manner of such publication.

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