

'On an imaginary lead': Defensibility and Post-Release Supervision of Life-Sentenced Prisoners by the Probation and Welfare Service

Mark Wilson Probation & Welfare Service

Summary This paper considers the Probation and Welfare Service's post-release supervision of life sentenced prisoners within the context of current policy and practice. The following is a description of some aspects of current practice in such post-release supervision and reflects attitudes of a number of key players in the process, including Probation and Welfare Service personnel and life-sentenced prisoners. A profile of life-sentenced prisoners on supervision in the community is also provided. Questions are asked as to how defensible is current practice and suggestions are made as to how it might be improved. This paper is based on research for a dissertation undertaken as part of a Masters Degree in Public Service Management at the Institute of Public Administration, Dublin. The methodology employed includes an examination of primary research, including a literature review, analysis of questionnaires and personal interviews.

Keywords Temporary release, public protection, defensibility, risk assessment, risk management.

Introduction

I can understand people, like victims' families. I can understand them not wanting people like me to walk, when their relation is not going to ever celebrate Christmas or birthdays. I celebrate Christmas, birthdays and loads of other things, but there is somebody, whose life I took, who is not. My dad passed away, he did, last year. And Christmas was absolutely...it wasn't horrendous, it was different. It was very quiet, it was very sad. There was happiness in it as well. And I miss him... and I miss him terribly - I missed him a lot over Christmas. And in missing my dad over Christmas I suddenly realised my victim's family are probably still missing her.

(Quotation from a life-sentenced prisoner interviewed by the author).

The publication of the report (Olden, 2001) of the inquiry into the killing of a woman by a life-sentenced prisoner on temporary release, once again sparked the debate as to whether such prisoners should ever be released. Also it has focussed minds on the nature of the supervision of released offenders serving life sentences for the most serious offences. Life imprisonment is the most severe form of punishment available to the courts under the law. A mandatory sentence for murder, it is also the maximum sentence for other serious offences such as kidnapping and rape to name but two. A life sentence has a symbolic significance in the mind of the public. It is likely to be regarded as the appropriate retributive punishment for those who commit the most serious crimes (Jones, 2000; 108). The centrality of the protection of the public also lies at the heart of all decisions of life imprisonment, symbolising the State's determination to protect its members from grave harm (Coker, 1985, 198).

Present government policy dictates that, in the majority of cases, persons sentenced to life imprisonment will be considered for release at some stage during their sentence. Unlike in some other jurisdictions, the courts in this jurisdiction do not impose a minimum set period, which must be served in custody by the life-sentenced prisoner, except in capital murder cases. The trial judge can and sometimes do recommend a minimum period to be served. In reality:

A life sentence means, not that the offender will be imprisoned for life, but that he will be liable to imprisonment for life. As a rule, murderers are released on licence having served a certain number of years imprisonment, but may be recalled at any time for breaching a condition of their release or committing a further offence. (O'Malley, 2000; 402)

Temporary Release

Consideration for release of a life-sentenced prisoner is given much thought and involves a process where a substantial amount of information is gathered from a wide variety of sources and a comprehensive risk assessment is carried out. The Parole Board, which is appointed by and reports to the Minister for Justice, Equality and Law Reform, considers this information and then makes a recommendation to the Minister. Release, if considered appropriate, can only then be granted by the Minister. When granted, the offender continues to serve the life sentence, but does so in the community. His/her continued freedom is conditional upon keeping within a strict set of conditions. Offenders are also assessed on an ongoing basis to ensure that they do not pose a risk to society. The responsibility for assessing this risk and for monitoring the offender's behaviour is charged to the Probation and Welfare Service (PWS).

Policy in this regard is in keeping with international agreements. In 1996 the United Nations stated, in relation to establishing penal policy for life imprisonment, that each state should:

Provide each prisoner with the possibility of release, upon the fulfilment of certain conditions framed by law. (United Nations, 1996)

The terms of reference of the Parole Board, include the provision that it review cases of eligible life sentenced prisoners, after seven years have been served, but excluding cases of some offenders including those convicted of capital murder. In its deliberations the Parole Board has available to it, as well as the original book of evidence from the trial (if prepared), reports from the prison, An Garda Síochána, PWS, Psychological and Psychiatric Services, and any other source deemed appropriate. Having considered all relevant documentation, and having interviewed the offender, the Board makes a recommendation to the Minister. Factors considered include:

- Whether a release would constitute a threat to the community?
- Is it reasonable to grant Temporary Release at this particular stage in view of the nature of the crime committed?
- Does the offender warrant Temporary Release having regard to behaviour while in prison?
- Are there any compassionate grounds which merit special consideration?

If and when the Minister sanctions the release of a life prisoner, a plan of release is prepared. This includes periods of Temporary Release (TR) from custody, as defined by the Criminal Justice Act, 1960 and the Criminal Justice (Temporary Release of Prisoners) Act, 2003. TR is a system whereby prisoners can be released for periods of time from custody. It can range from a matter of hours, to day release, weekend release or full release. Conditions are attached which stipulate various restrictions and in the case of the life-sentenced prisoner, full co-operation with the PWS is a fundamental requirement.

Seán Aylward, then Director-General of the Irish Prison Service (IPS), noted, in relation to life sentenced prisoners:

Conditions imposed on offenders on temporary release vary but may include reporting at regular intervals to the Gardai, restrictions on where they may work and live, restrictions on who they may associate

with and or/directions regarding consuming alcohol, attending counselling or continuing medication regimes. While a small number of these people do return to prison due to breaches of conditions, the vast majority of them do not re-offend and become successfully reintegrated into society. (Observations of Director General, IPS, on the Olden Report: Olden, 2001)

Supervised Temporary Release

In April 2002, when this research was carried out, there were 105 prisoners in custody serving life imprisonment. They represented 4.4% of the prison population (Irish Prison Service, 2001; 70). Some had been in custody for a very brief time, others in excess of 30 years. Five of these prisoners were female (total female prison population 93). The PWS is charged with responsibility for supervising life-sentenced prisoners in the community and in this it follows the United Nations Standard Minimum Rules for Non-Custodial Measures (United Nations, 1990). These standards (the ‘Tokyo Rules’), define the purpose of such supervision as being:

To reduce re-offending and assist the offender’s integration into society in a way which minimises the likelihood of a return to crime.

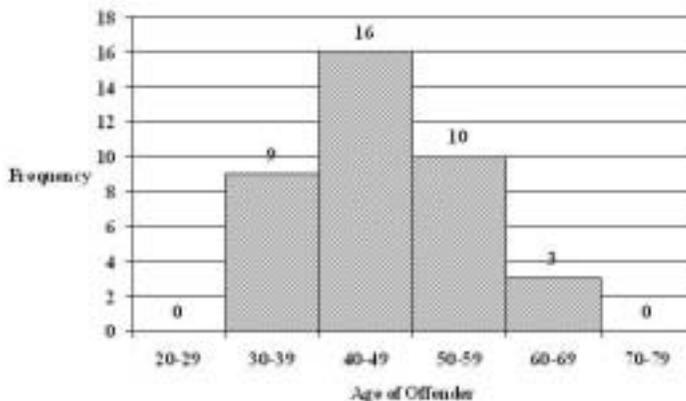
(United Nations, 1990, 10: 1)

The author sought the views of Probation and Welfare Officers and a sample of life-sentenced prisoners on release in the community in regard to their experience of this process. Of particular interest was the Probation and Welfare Officers’ perspective on risk assessment and risk management.

Offender Age Profile

Questionnaires were issued to all community based Probation and Welfare Officers. Completed questionnaires in relation to forty life-sentenced prisoners under supervision in the community at the time, representing 71% of those under supervision in the community were received. All were serving sentences for murder and two of the forty were women. The age breakdown of thirty eight of this sample is shown in Figure 1 (relevant values not returned in respect of two prisoners):

Figure 1: Age of Life-Sentenced Prisoners in the Research Sample under Post-Release Supervision (2002)



The following table indicates the number of life-sentenced prisoners in the research sample released over a thirty year period:

Table 1: Year of First Release from Prison for Life-Sentenced Prisoners on Post-Release Supervision and Average Time Spent in Prison

YEAR RELEASED	NUMBER RELEASED	AVERAGE TIME SERVED (YEARS)
1971-1975	1	3
1976-1980	3	7.6
1981-1985	5	8.75
1986-1990	1	8
1991-1995	17	11
1996-2001	13	13
Total	40	

The Experience of Supervision

The chance of me offending again is very small. It's a stupid question... you have as much chance of committing another offence as me.

(Life-sentenced prisoner interviewed by the author)

This statement was made by an offender who, when interviewed, considered himself to be at low risk of re-offending. His probation officer however assessed him as potentially at high risk of generalised re-offending. The effectiveness of post-release supervision hinges on the probation officer's ability to assess the level of risk a life-sentenced prisoner poses to the community. Within the task of post-release supervision, the centrality of effective risk assessment cannot be over emphasised.

The Role of the Supervising Probation Officer

In terms of risk management, Probation and Welfare Officers interviewed were asked if they viewed supervision of a life prisoner as different from the supervision of any other offender. Three main issues were identified:

1. Seriousness of the offence - all Officers interviewed were very aware of the nature of the offence committed and had varying degrees of anxiety resulting from this. These stemmed from the anticipated consequences of the offender re-offending (both for any victim/s and for the supervising Officer), personal safety issues and the high-profile nature of the case.

2. Supervisory relationship - due to the long-term nature of the supervision period, Officers were aware of the need to maintain a balance between monitoring the offender and retaining a supportive relationship. One Officer noted that the role of the Probation and Welfare Officer is not as clear-cut as in other supervision cases. He believed there was no identified task or contract to be completed, with the probation officer simply fulfilling government policy by his/her generalised involvement with the offender.

Table 2: Level of Co-operation with Supervision as Assessed by Probation and Welfare Officers

Level of Co-operation	Number of Offenders
Very Good	21
Good	8
Average	5
Poor	4
Very Poor	0
Total	38

3. Impact of long-term imprisonment – Officers believed the negative impact of imprisonment created additional obstacles to the reintegration of the offender. Some of the impacts identified by Officers in offenders included:

- Shattered confidence
- Anxiety
- Isolation/depression
- Reduced ability to socialise
- Reduced ability to gain employment
- Negative attitude towards authority
- Increased dependency on others
- Fear of being alone
- Inability to cope with lack of structure

One Officer noted that the supervising Probation and Welfare Officer may be one of few people who knows the offender's whole story. As he/she attempts to rebuild his life, it is the probation officer who can offer support, who has an understanding of the offender's past, but also an understanding of the potential risks which may be a cause for concern.

The Offender's Perspective

When the six life prisoners were interviewed for the research, they were asked about their understanding of the purpose of post-release supervision. One summed it up as:

I'm on an imaginary lead. You're on the other end of it. You can let the lead out from time to time, or when you want to, you can pull the whole bloody thing back in.

The notion of being kept in line is one many life-sentenced prisoners share:

She does a good job keeping me in line, to give her her due, she keeps me straight about my drinking. I see it more seriously the way she puts it.

Another believed the reason for post-release supervision was political:

So if a life-sentenced prisoner killed again the Minister could say – 'this will never happen again' - or 'we did everything in our power' - and he could list all the things that were done. He could say – 'we could do no more than that unless we keep them locked up.'

The attitude of the life-sentenced prisoners, towards supervision, was primarily one of acceptance and a belief that probation officers are simply doing their job:

I can understand why I have to be supervised. I took a life and was sentenced to life. Until my life ends I will have contact with the Probation and Welfare Service.

Or as another put it:

You can't wander around with a dirty life.

Another life-sentenced prisoner's view was less positive:

There is a lack of trust... you're compelled to see your probation officer but don't want to. He may be the nicest person going...eventually you say that you will give them their hour of power and go in and yap away, but when you leave the whole thing [offence] comes back on top of you.

Three of the life-sentenced prisoners saw a value in post-release supervision. This centred around the offender not wanting to return to prison:

Seeing my probation officer keeps me on my toes. If he wasn't there I could get too complacent.

Two others were more ambivalent, reluctant to acknowledge a benefit in something which was imposed on them. Life-sentenced prisoners found the quality of straight talking particularly important in an effective probation officer. They believed that, be it good or bad news, it was important to know what was happening. Other qualities identified by life-sentenced prisoners were directness, respect, trustworthiness, supportiveness, and a non-patronising attitude:

Someone who can listen, someone you can talk to, relax with, not always with the pen in their hand.

One life-sentenced prisoner said, insightfully:

A lot has to do with myself and the way I conduct myself and the way I live my life.

The fear of returning to prison appeared to be a strong motivating factor in regulating the attitudes and behaviour of the life-sentenced prisoners interviewed:

There have been occasions where there has been trouble. Because I have the good sense to know that if I get involved I am going back in [prison], regardless of how many other people are involved.

The avoidance of trouble is seen as paramount:

The last thing I want to do is to go back to prison, I can't live like others and take life as it comes as they do.

Four of those interviewed expressed high levels of anxiety when going back to the prison periodically to sign the TR forms, fearing being kept in custody again. One life-sentenced prisoner, whose TR was not renewed when he called to the prison and he was kept in custody, described the experience:

It was worse than when I was sentenced...it was two days before Christmas...I got no explanation from anyone....I had all my presents bought and everything.

Asked if the offence they committed, or being under supervision, impacted on their lives today, some of the prisoners expressed the following opinions:

You're not totally free...you have to take more into consideration than others...I don't want to drag my partner and child into this. My biggest problem is when my daughter gets old enough to understand, how do I tell her about the offence?

When you come out of prison you're leading two lives and I suppose to some point today I'm still lead-

ing two lives, because there are people who know where you've come from and there are people who don't know where you've come from. Some people in my opinion couldn't be trusted to be told.

It holds me back. It would hold me back from a personal relationship.

One respondent expressed empathy for the victims' families in a powerful way. The victim perspective he took was expressed as follows:

I can understand people, like victims' families. I can understand them not wanting people like me to walk, when their relation is not going to ever celebrate Christmas or birthdays. I celebrate Christmas, birthdays and loads of other things, but there is somebody, whose life I took, who is not. My dad passed away, he did, last year. And Christmas was absolutely...it wasn't horrendous, it was different. It was very quiet, it was very sad. There was happiness in it as well. And I miss him and I miss him terribly - I missed him a lot over Christmas. And in missing my dad over Christmas I suddenly realised my victim's family are probably still missing her.

On the evidence gathered in the study, the purpose of supervision clearly has different meanings for the different players. Control, reintegration, support and the need to address offending behaviour are among them. For life-sentenced prisoners themselves, they appear to accept 'that which they cannot change', being simply grateful to remain out of prison.

Effectiveness of supervision

What measurements can assist in evaluating the effectiveness of post-release supervision?

- The number of life-sentenced prisoners who have killed again while under supervision?
- The number who have been convicted of further serious offences (such as offences against the person)?
- The number who have been convicted of any further offence?
- The number recalled to prison?

If interventions (directed at the life-sentenced prisoner throughout his prison term and during post-release supervision) are successful, what behavioural or attitudinal characteristics, and changes, should be evident? Certainly there would be an expectation that the offender take responsibility for his offending behaviour and demonstrate a commitment to leading a law-abiding lifestyle in the future. An understanding of the factors, which place the offender at risk of further offending, would also be desirable. Motivation to reintegrate into and become actively involved in the community would also be welcomed; as would commitment to gain the skills needed to contribute positively in that community. To achieve such sought outcomes would require assessment and management of the reintegration potential of the offender from the point of sentencing through to and after. As the PWS is charged with the task of post-release supervision, it is appropriate that it take a proactive, leadership role in this regard, identifying targets for change, initiating programmes and contributing to multi-disciplinary work in penal institutions and in the community.

Defensibility

The responsibility on Probation and Welfare Officers in supervising life sentenced prisoners is significant. How does an Officer ensure he/she makes correct decisions along the assessment and supervisory path? Kemshall cites an extremely useful term, used by Carson (1996), describing the concept of 'Defensibility':

How decisions are evaluated with hindsight after negative outcomes have occurred, and whether decisions can be considered to be 'reasonable'. As Carson notes, whether a responsible body of co-profes-

sionals would have made the same decision. This is particularly pertinent for those agencies who carry out risk assessments in the public eye, and where risk assessment failures can be very costly to organisational credibility. (Kemshall, 2001: 21)

The concept of 'defensibility' provides a context within which the supervising Probation and Welfare Officer can consider his/her decisions, and allows an organisation such as the PWS to assess the decision-making ability of its staff. Services, such as the PWS, must be prepared to consider the issue of defensibility. However, is an approach, so cautious in its outlook, sufficient as a rationale for policy-making? 'Defensibility' demands that a service consider current systems and procedures, not only at the operational level, but also at management and strategic levels.

Kemshall outlines the elements needed, for a decision to be 'defensible' (see also Monahan, 1993):

A defensible decision is therefore made when:

- All reasonable steps have been taken;
- Reliable assessment tools have been used;
- Information is collected and thoroughly evaluated;
- Decisions are recorded;
- Staff work within agency policy and procedures; and
- Staff communicate with others and seek information they do not have.

How can 'reasonable' be defined? The Collins English Dictionary defines it as: 'showing reason or sound judgement.' Probation and Welfare Officers generally have a comprehensive professional training, completed prior to taking up employment and work in a Service with a long history of successful supervision of offenders in the community. Officers' clinical judgement is based on such training and experience, the quality of which was evident during the interviews conducted. Concerns, when identified, appeared to be brought appropriately to the attention of line management. Evidence available to the author (primarily experiential and anecdotal) suggests that the clinical judgement used by Probation and Welfare Officers is of a high standard and Officers demonstrate the appropriate use of line management. At the time of the initial research there was a limited body of policy or procedures in relation to the supervision of life-sentenced prisoners available to PWS personnel. There was also no comprehensive, structured risk assessment system in operation across the organisation. These earlier deficits are now being addressed. There is also the need to further develop systems of information exchange with other appropriate agencies, which would also enhance accountability.

'Defensibility' then, in essence centres on risk assessment and risk management:

Risk Assessment: The policy of releasing life-sentenced prisoners into the community inherently involves risk. The most effective form of risk assessment is a combination of clinical judgement and actuarial risk assessment tools. The LSI-R (Level of Service Inventory-Revised) system, devised in Canada, is being introduced nationally in 2004. This will increase the ability of Probation and Welfare Officers to assess individual offenders' generalised likelihood of reoffending. Equally, best practice concerning risk management reinforces the principles of 'defensibility':

Risk Management: The transition from custody into the community needs to be as seamless as possible. Specified levels of probation officer-offender contact, combined with specific conditions of release, need to be supplemented by an effective supervisory relationship formed between the life-sentenced prisoner and the supervising officer. Staff require guidelines identifying Service policy and procedures, particular-

ly in circumstances where the offender's behaviour is a cause of concern. Supervision of life-sentenced prisoners is difficult work, requiring experienced staff and appropriate service training and support from line management. Perhaps consideration should be given to the introduction of Multi-Agency Risk Assessment Panels, for the co-ordinated management of high risk offenders in the community. Effective risk management might also benefit from a senior Probation & Welfare Service manager having overall responsibility for co-ordinating reintegration work with life-sentenced prisoners.

The creation of a dedicated life-sentenced prisoner unit in the PWS, with overall responsibility for the development of services regarding life-sentenced prisoners is a proposal which might be considered. From the time the judge passes sentence, until the offender's death, the life-sentenced prisoner remains a prisoner, whether in custody or on temporary release. There is a certain logic therefore, to the proposal that rehabilitative responsibility for this group falls to one planning and operational unit.

Benefits, which might accrue from this proposal include:

- Development of the identified practice standards/guidelines for staff
- Identification of appropriate training needs
- Development of improved risk assessment systems
- Co-ordination with senior personnel in key agencies/departments (Department of Justice, Equality and Law Reform, An Garda Síochána, Irish Prison Service, Victim Support, local authorities etc.).
- Development of community supports at a local and national level (such as accommodation, employment, training or social activities)
- Public profile of this area of work
- Assimilation of relevant research and international 'best practice.'

Discussion

This article has noted how a vast amount of information and expertise surrounds the initial decision to release the life-sentenced prisoner into the community. In the course of its deliberations, the Parole Board may receive submissions from a variety of sources (see above), as well as considering the Book of Evidence and any comments passed by the trial judge. Then, in contrast, once the offender is released, responsibility transfers primarily to the Probation & Welfare Service and indeed to one Probation and Welfare Officer to supervise the offender on a day to day basis and ensure public safety. At present, this Officer uses his/her clinical judgement and consults with his/her line manager as appropriate. Risk assessments and management rely heavily on the Officer's assessment, interviewing technique, case management skills, professional judgement and experience. Collateral information is collated, and community agencies are consulted to develop a supervision plan designed to manage and reduce the offender's risk of re-offending. It is suggested that there is a need to develop these procedures, thus increasing the effectiveness of post-release supervision, particularly given the harm involved in the original offence and the high profile given to many such cases.

This article has made suggestions for change so that the weight of responsibility for decision making might not fall to the same extent on individual Probation and Welfare Officers. Regular formal review of life-sentence cases at Assistant Principal Probation and Welfare Officer level, the use of objective actuarial risk assessment tools, the centralising of responsibility for this offender type, and the use of multi-agency fora for risk management and public protection are some proposals for the future. Liaison with both statutory and voluntary agencies providing a service for an offender (accommodation, drug/alcohol treatment, training etc) is a key part of a probation officer's role. At present, there is no requirement that

life-sentenced prisoners receive any priority when such services are required, even when needed to manage a high-risk situation. Probation & Welfare Officers are largely dependent on personal contacts or the goodwill of service-providers. Also, there may be no formal, written arrangements for the transfer of information between services. Only by bringing relevant services together in a co-ordinated way can public protection be given the attention it deserves. This, in fact, is the approach taken when considering the offender's first release from custody. It is clearly logical to extend and deepen such inter-agency co-operation to maximise the risk management potential of any plan formulated to ensure public safety.

Conclusion

Every probation officer's worst nightmare is that an offender he/she is supervising takes a life. This fear is yet greater and more real with a life-sentenced offender. The daily decision not to return the offender to custody carries with it the constant possibility of this fear being realised. To cope with this ongoing anxiety probation officers must be able to justify to themselves, their employer and, to society at large that they have made informed decisions, followed guidelines and procedures and at every step provided the most effective supervision possible. This article has considered the process of supervision of life-sentenced prisoners from the perspective of the prisoner and the probation officer. Public protection, viewed against a backdrop of defensibility of decisions in a risk environment, requires the highest possible probation practice standards.

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Mark Wilson is a Senior Probation & Welfare Officer in Mountjoy Prison, North Circular Road, Dublin 7.
Email: mjwilson@irishprisons.ie