



**NIACRO Response to the Department of Justice
Consultation of Consent to Serious Harm for Sexual
Gratification: Not a Defence**

30th November 2020



NIACRO Response DoJ Consent to Serious Harm Consultation

Introduction

NIACRO is a voluntary organisation that has been working for almost 50 years to reduce crime and its impact on people and communities. Our vision is of a society in which the needs and rights of all citizens, including victims of crime, adults and children who offend and those who are at risk of offending, are equally respected.

The Charity's Articles of Associations, approved in October 2015 by the Charity Commission for NI, identify NIACRO's objects which meet public benefit test, as being:

- to alleviate need and disadvantage through the provision of services, assistance, advocacy and representation to care for, resettle and rehabilitate offenders and ex-offenders, alleged offenders, persons at risk of becoming offenders and to care for the victims of crime and the families.
- to work for the prevention and reduction of crime for the benefit of the public in Northern Ireland.

Specifically, NIACRO's contributions are to:

- support the resettlement of adults leaving prison and those on community supervision.
- build skills, confidence and employability of people both in prison and in the community.
- support children, young people, families and adults who are displaying behaviour that would put them at risk of engaging with the criminal justice system, to make positive lifestyle choices.
- influence service providers in the statutory, voluntary and community sector and build their capacity to provide appropriate support to those affected by the criminal justice system.
- impact policy and practice by communicating our policy asks and engaging relevant publics at every level.

At the heart of NIACRO's work is the aim to reduce (re)offending in the belief that integrated and flexible approaches towards desistance are most effective.



Preliminary Comments

NIACRO welcomes the opportunity to respond to the Department of Justice Consultation on Consent to Serious Harm for Sexual Gratification: Not a Defence. This response, based on our experience of service delivery to both those who offend and are victims, builds upon our previous submission of a Call to Evidence for the Justice Committee for the Domestic Abuse and Family Proceedings Bill submitted earlier in the year. As the Justice Minister says in the Ministerial Forward to the public consultation, there is a gap in current Northern Ireland legislation regarding the act of choking or strangulation by defendants. As the consultation states, there are many reasons that the 'Rough Sex' defence is problematic.

Rough play is a complex issue that is not understood by the public and is often seen as a taboo topic. Whether it is a sexual gratification activity made popular by BDSM-themed forms of entertainment, such as the '50 Shades of Grey' trilogy, or from a more heinous form of intimidation and abuse.

NIACRO Responses to Consultation Questions

Question 1. Do you think the law in Northern Ireland is sufficient as it stands?

No, NIACRO does not think the law in Northern Ireland is sufficient as it stands. The defence that a person can consent to serious harm and/or death should not be an available option.

Should the defence remain, the outcome of cases may be dependent on the jury or judge's understanding or misunderstandings of rough consensual sex, and, to date, many trials have caused great harm and distress to families of the victims.

As the 'We Can't Consent to This' campaign found in their research, 38% of women aged 18-39 had experienced slapping, choking, gagging or spitting during consensual sex and that the acts were predominately unwanted .

Through our work with women who have criminal convictions, those who were victims of domestic abuse have disclosed that they have experienced strangulation or other methods of abuse during sex. The 'Rough Sex' defence is potentially harmful and dangerous for all victims, but especially for women in vulnerable positions such as being in an abusive relationship or in the sex trade. Women in abusive relationships often have a high tolerance for physical violence and might not be able to say 'no' or know when they are being manipulated or coerced.

A 2009 study conducted by Glass, et al, titled *Non Fatal Strangulation is an Important Risk Factor for Homicide of Women* concluded that non-fatal strangulation by an intimate partner was a risk factor for a major assault, attempted murder or murder of women.

The study found that non-fatal strangulation was reported in:



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- 10% of abused controls
- 45% of attempted homicides
- 43% of homicides

Prior non-fatal strangulation was associated with greater than six-fold odds of experiencing an attempted homicide, and over seven-fold odds of a homicide.¹ Even when individuals consent to risky sexual practices, the 'Rough Sex' defence is a loophole at risk of exploitation by perpetrators of domestic abuse, violent sexual offences or any form of misogyny that disregards the wellbeing of and care for an individual. NIACRO agrees that "having the ability in legislation to deal effectively with offenders who may be playing out misogynistic or extreme sadomasochistic fantasies in the most serious cases is essential."

Furthermore, NIACRO agrees with the consultation's proposal to restrict the application to capture the more serious cases and filter out cases where minor injuries are sustained in a consensual context.

Question 2 (a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

Yes, NIACRO thinks that consent to serious harm should be outlawed in legislation, in line with the amendment in the Domestic Abuse Bill in England and Wales.

Question 2 (b) If yes, do you think the offences to which the amendment applies are appropriate?

Yes, NIACRO finds no issue with the proposed offences to which the amendment applies and find the exemption reasonable.

Question 3. Do you consider that a programme of education is needed to:

- **raise awareness of the dangers of rough sex and the meaning of consent; and**
- **raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

Yes, a public programme of education raising awareness of the dangers of rough sex and the meaning of consent, training for criminal justice professionals would be helpful to raise awareness, create accountability, and encourage partnership working.

There needs to be attitudinal changes with society about what might be considered taboo sexual practices, how to engage safely, and the meaning of consent and on-going consent (i.e. that it is needed throughout the entirety of an encounter).

¹ https://www.researchgate.net/publication/5883869_Non-fatal_Strangulation_is_an_Important_Risk_Factor_for_Homicide_of_Women



Question 4. Do you consider something different is required for Northern Ireland?

No, NIACRO doesn't think that something other than suggested in the consultation is required for Northern Ireland.

Conclusion

NIACRO welcomes the opportunity to contribute to the Consent to Serious Harm for Sexual Gratification: Not a Defence Public Consultation and looks forward to furthering developments.

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