



Select Committee on Justice and Equality - Criminal Justice (Victims of Crime) Bill 2016

Submission Cover Sheet:

The Dublin Rape Crisis Centre (DRCC) is a non-governmental organisation which for almost 40 years has been synonymous with providing crisis counselling and long-term therapy to adults who have experienced rape, sexual assault and childhood sexual abuse. We are aware that a 'one size fits all' solution to the needs of victims does not work. Each victim's needs are different and complex. We have worked successfully as agents of change, educating society about the impacts of sexual violence, challenging attitudes and injustices, advocating for legislation, informing policy and providing victims/survivors with the compassion and dignity that they deserve. Rape and all forms of sexual violence are crimes that have to be addressed in our society so that the perpetrators can be appropriately punished and the victims can be supported to work through their trauma.

Our submission is informed by the experiences of women and men accessing our services and the research and policy work of the organisation. Few would deny the often-devastating effects sexual violence has on those upon whom it is inflicted. Victims of this crime may be affected in many ways: physically, emotionally, psychologically and financially. They enter the criminal justice system by chance rather than by choice. Indeed, their participation and co-operation in the criminal justice system is essential to the prosecution of the guilty and in law enforcement's efforts to control sexual crimes. Without them, it may not be possible to determine the facts of the case and administer justice. And yet the under-reporting of these crimes has long been an issue in this country. We welcome the Criminal Justice (Victims of Crime) Bill 2016; we look forward to its implementation which we hope will be the force for change that keeps not only victims of sexual offences but all victims in the criminal justice system.

The DRCC is a founding member of the Victims' Rights Alliance (VRA), an alliance of victim support and human rights organisations, whose primary goal is to ensure that Irish legislation when implemented will comply fully with Directive 2012/29/EU. As a member of that alliance, in addition making our own submission, we have given our full endorsement to a submission made by the coordinator of the VRA Maria McDonald BL.

For further information, please contact Noeline Blackwell CEO or Shirley Scott Policy Officer, Dublin Rape Crisis Centre, 70 Lower Leeson Street, Dublin 2. noeline.blackwell@rcc.ie. 01-661 4911.

Criminal Justice (Victims of Crime) Bill 2016

Introduction

The main purpose of the Criminal Justice (Victims of Crime) Bill 2016 is to give effect to provisions of Directive 2012/29/EU of the European Parliament and the Council of Europe establishing minimum standards on the rights, support and protection of victims of crime. That Directive now has direct effect in Ireland and this legislation when passed must provide at a minimum the rights available to everyone right now through the Directive.

Although the Dublin Rape Crisis Centre (DRCC) broadly welcomes the spirit and many of the provisions of this Bill, there are some aspects we feel merit attention and/or change.

Section 2: Interpretation

This section of the Bill defines a victim as ‘a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence’. The definition also extends to a family member of a person whose death was directly caused by an offence. This inclusivity is welcome but to ensure the Victims’ Directive is transposed appropriately, the definition needs to be expanded further. Recital 19 of the Directive states a victim should enjoy that status regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the relationship between the offender and the victim. The General Scheme of the 2015 Bill also included that expanded definition of a victim.

➤ Recommendation:-

The DRCC recommends that a victim should benefit from the rights provided under the Bill, irrespective of whether a formal complaint is made or a suspect has been identified.

Section 6: Information on first contact

This section sets out a wide range of information which victims must receive when they first make contact with An Garda Síochána or, in certain cases, the Garda Síochána Ombudsman Commission in relation to an alleged offence. Limiting the provision of information to be given to victims specifically to the Gardaí or the Ombudsman Commission, disregards the fact that a victim’s first contact could be with another authority and/or agency.

The Bill diverges from Article 4(1) of the Directive which provides that the member state 'shall ensure that victims are offered the following information from their first contact with a competent authority'. The Bill would be enhanced if it were amended to reflect more closely the wording of the Directive, particularly if the definition of a victim is also expanded.

➤ **Recommendation:-**

We recommend that Section 6(1) of the Bill include other authorities and/or agencies that a victim could contact and that those authorities and/or agencies should be able to provide victims with all necessary information.

The second point in relation to this section is that section 6(8) states that the Gardaí or the Ombudsman Commission may with the victims consent arrange for the victim to be referred to a service which provides support for victims. Article 8(2) of the Directive provides that the member state 'shall facilitate the referral of victims, by the competent authority ... to victim support services'. The significance of aligning the Bill more precisely to the Directive is that the referral process becomes mandatory as opposed to discretionary.

➤ **Recommendation:-**

We recommend that Section 6(8) of the Bill provide that all statutory authorities with whom the victim has contact, including a member of the Garda Síochána or an officer of the Ombudsman Commission, shall facilitate the referral of victims to the services which provides support for victims including any specialist services relating to the particular category of crime by which the victim was affected.

Section 16: Special measures during investigations

Section 16 outlines the special measures which must be implemented in respect of a victim during interviews in the course of an investigation. In the case of sexual violence, gender-based violence or violence in a close relationship, a victim may request that they are interviewed by a person of the same sex as them. For the Bill to reflect the spirit of the Directive, then explicit reference similar to that outlined in Article 23(2) 'the following measures shall be available' needs to be made. Given the Bill contains exemptions for providing these special measures, it would be apt to state that these measures 'shall be' provided where appropriate.

➤ **Recommendation:-**

We recommend that in Section 16(1)(b) of the Bill that the phrase ‘may be’ should be replaced with ‘shall be’ provided where appropriate, to remove any doubt as to the application of this special measure.

Section 18: Special measures during criminal proceedings

Victims react differently in the aftermath of a crime. Sections 14 to 18, inclusive, make provision for the assessment of victims and the implementation of protection and special measures identified by that individual assessment. To ensure that the special measures are adopted during the trial we suggest that there is an obligation on prosecutors to do more than ‘have regard to the fact that specific protection needs have been identified’.

➤ **Recommendation:-**

We recommend that within Section 18 of the Bill there is a positive obligation on prosecutors to bring to the courts attention the existence of an assessment report that provides the most suitable support and assistance to the victim.

Section 30: Non-compliance with Act

There is no mechanism for victims to register a complaint about their treatment within the criminal justice system similar to Article 4(h) of the Directive and Head 30 of the General Scheme of the 2015 Bill. Nor are there any obvious sanctions for non-compliance akin to Head 30(2) of the General Scheme outlining how the ‘Minister may designate an independent central appeal body to which any person who is dissatisfied with the outcome of a procedure may appeal’. Instead of learning from the experiences of individual victims of crime, we may be leaving victims’ with no other option than to bring their complaint to court.

➤ **Recommendation:-**

We recommend that Section 30 of the Bill include a practical mechanism for victims to be able to register a complaint against those State agencies who do not comply with the legislation. Having a mechanism whereby the State agencies are held to account not only enhances the victim’s relations within the criminal justice system but could also manage the consistency of treatment they should expect to receive.

Omissions

- Unlike Articles 4(1)(j) and 12 of the Directive and Head 28 of the General Scheme of the 2015 Bill, no reference is made in this Bill to the issue of restorative justice. This is a disappointment. The government argument is likely to be that as no restorative justice scheme exists, it is not obliged to legislate on this. However, this misses an important opportunity to improve our justice system and the safety of our society generally. While not suitable in all cases, there is real value for victims and for the wider society in putting adequate restorative justice facilities in place. In sexual violence cases, the vast majority of victims and perpetrators are known to each other. They are often intimate partners or family members. Other cases of historic sexual abuse leave victims crying out for answers decades after the event. It is now settled that for some of these victims, restorative justice will provide true access to justice. This is the best opportunity to legislate for this in line with European norms and it is most unfortunate that the opportunity is not been taken.

- **Recommendation:-**
That the provisions of Articles 4(1) and 12 of the EU Directive, as developed in Head 28 of the General Scheme of the 2015 Bill be incorporated into the Victims of Crime Bill 2016

- Unlike Article 25 and Head 20 of the General Scheme of the 2015 Bill; no specific reference is made in this Bill to those official(s) who are likely to come into contact with victims of crime getting specialist and/or general training, appropriate to their level of contact with the victim, to enable them deal appropriately with the situations as its presents.

- **Recommendation:-**
That the Bill specifically provide for adequate training on victims rights for all those working in statutory agencies who are likely to come into contact with victims of crime as set out in Article 25 of the EU Directive and Head 20 of the General General Scheme of the 2015 Bill.

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