



**RCNI Briefing Note on the Criminal Justice
(Victims of Crime) Bill 2016**

For Members of the Oireachtas

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1.0 Introduction

Rape Crisis Network Ireland is the specialist sexual violence national policy body of the Rape Crisis sector, informed, owned and governed by our member Rape Crisis Centres. Its work includes policy development, prevention, advocacy, data collection and direct legal services to survivors of sexual violence and Rape Crisis staff and volunteers. It aims to prevent sexual violence through education at all levels, awareness raising and training, and to improve responses and services to survivors of sexual violence. Its work in every area is informed by the best national and international evidence available, and also by the daily experiences of survivors and Centres supporting them across a wide range of issues.

RCNI welcomes very many of the provisions in the Criminal Justice (Victims of Crime) Bill 2016 needed to transpose the EU Victims' of Crime Directive 2012/29. In this Briefing Note, we would like to draw your attention to certain aspects of the Bill which we think could be improved.

We refer you also to the RCNI Submission on the Revised General Scheme of this Bill to the Joint Oireachtas Committee on Justice, Defence and Equality made in 2015.¹

1.1 Structure of this Briefing Note

This Briefing Note will comment on several Sections from the Bill, in the order in which they appear, and will refer where appropriate to the RCNI Submission made in 2015. Where appropriate, recommendations for change are made under each Section discussed. At the end, significant **omissions** from Bill are identified and discussed.

1.2 Section 4(1) (a): Application of Act confines rights under Act to criminal proceedings instituted after date of commencement

This means that the special measures introduced by Section 26 of the Bill as amendments to the Criminal Evidence Act 1992, will only be made available to victims whose cases are prosecuted after the new Act comes into force. Special measures under Section 26 may be applied by the trial judge even though there was no prior individual assessment of the victim's specific protection needs and no report on same was ever produced. The Court must have regard to the matters listed in the proposed Section 14B of the CEA 1992 in deciding whether the victim would benefit from any of the special measures available, but it does not have to have a formal assessment or report before doing so. Therefore, it is illogical to exclude all victims in whose cases proceedings were instituted before the Act comes into force.

¹ <http://www.rcni.ie/wp-content/uploads/RCNI-Submission-to-JOCJDE-on-Victims-of-Crime-GS-July-2015-updated-version-Ariel-with-repeated-recs-1.pdf>

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Further, it is unfair to victims that the availability of special measures which may be very necessary and which might do much to minimise the risk of secondary traumatization, should depend on the date on which proceedings were instituted in their case. Finally, the EU Directive 2012/29 establishing minimum standards on rights, support and protection for victims of crime, applies to all victims, not only those whose cases were instituted after a certain date.

Recommendation 1: Section 4(1)(a) and Section 4 (2) should be deleted from the Bill.

1.3 Section 6: Information on first contact

1.3.1 Section 6(1) (a), “services providing support for victims”, and Section 6(8) “A member of the Garda Síochána.....may..arrange for the victim to be referred to a service which provides support for victims”, should be reworded to emphasise the importance of giving victims information which is appropriate to their own characteristics and situation, and referring them to appropriate and where necessary, specialist support services, respectively. The relevant Article 4(1)(a) of the Directive refers to “support...including, where relevant...[access to] medical support, any specialist support, including psychological support, and alternative accommodation”, in respect of information to be offered. Article 8(3) establishes the right to specialist support services, “in addition to, or as an integrated part of, general victim support services.....Victims.....shall have access to such servicesin accordance with their specific needs and the degree of harm suffered as a result of the criminal offence...”. Inappropriate referrals to general support services and information which does not include information about appropriately specialist support services, both increase the risk that the victim will not be cared for as s/he should be and in the worst cases, may be harmed inadvertently because s/he does not know and/or is not given the option of being referred, to such specialist services.

1.3.2 In Section 6 (3), which describes the manner in which victims should be supplied with information, and in the last Section 6(8), which is about referral to victim support services, the wording “as soon as practicable” should be replaced with “without unnecessary delay”, as in the Directive, to underline the importance of getting information and appropriate referrals in a timely manner;

1.3.3 Section 6(5) sets out the circumstances in which the right to be accompanied by a person of one’s choice and/or by a legal representative when contacting the competent authorities for the first time in respect of an offence, may be curtailed. It does not, however, allow for the victim to be given an opportunity to make alternative arrangements to be accompanied by another person and/or lawyer, in cases where such a substitution would answer the concerns of the member of the Garda Síochána [etc]. This means that a victim may be deprived unnecessarily of a powerful support, and the absence of such support may have a strongly deterrent effect. The same argument applies if anything with even greater

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force at the complaint and interview stages, and the same recommendation is made in respect of the respective complaint and interview Sections 11 and 13, of this Bill.

Recommendation 2: Section 6(1)(a) and Section 6(8) should be amended to reflect the wording of Article 4(1)(a) of the Directive, for example: “services providing for victims, including where relevant, medical support, appropriate specialist services including psychological support services and services providing alternative accommodation”;

Recommendation 3: The wording in Sections 6(3) and 6(8) “without unnecessary delay”, as in the Directive, should replace the proposed “as soon as practicable”;

Recommendation 4: Sections 6(5), 11(2) and 13(3) of the Bill which deal with accompaniment of the victim by a person of their choice and/or their legal representative at first contact, complaint and interview stages respectively, should be amended to include provision for the victim to be given a reasonable opportunity to make alternative arrangements for accompaniment, where the substitution of an individual by another suitable person, would answer the concerns of the member of the Garda Síochána [etc].

1.4 Section 7: Information regarding investigations and criminal proceedings

It would be very helpful and reassuring for victims to be informed of:

- (a) any bail conditions imposed which are relevant to their well-being and/or safety; and
- (b) what to do if they are breached, or it seems that a breach may be imminent and/or:
- (c) any attempt to, or actual intimidation of themselves by the accused and/or others acting on his behalf.

In sexual cases, there may be a very lengthy gap between the institution of proceedings and the first court date, and between the first court date and the trial date. Many victims are terrified that they or their loved ones will be intimidated by the accused and/or his associates during this period, and it is important that they know not only whether there are any bail conditions restricting contact with themselves but also, what they can do if some breach of same, or separate intimidating or harassment behaviour does occur. It will be necessary to have regard here to the proposed new Bail (Amendment) Bill 2016, which would allow complainants to give evidence of intimidatory behaviours in bail applications.²

It would also be very helpful and reassuring for victims to be told the details of any post-trial or post-conviction order, other than imprisonment, which is aimed at preventing them from harm at the hands of the person accused/convicted. While we note with approval the

² <http://www.oireachtas.ie/documents/bills28/bills/2016/10816/B10816D.pdf>

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detailed list of the information which must be provided where a young person has been detained or been remanded in custody, we submit that it is also appropriate to provide a similar list of information to be supplied to victims of sexual crimes, as there are several different kinds of orders which may be made post-trial or post-conviction in this kind of case, and it is important that victims understand that these orders are available, that they may be applied for, and that once made, they may be enforced. In this regard, we welcome particularly the introduction of anti-harassment orders in the Criminal Law (Sexual Offences) Bill 2015³, which will help protect victims from harassment at the hands of perpetrators of sexual crimes once they are released from custody.

Recommendation 5: This list in Section 7(2) should include information about bail (conditions, breach of conditions, evidence of intimidation, procedure if any breach of relevant conditions occurs or is suspected), and about witness intimidation (nature of offence, what to do if it is suspected or occurs);

Recommendation 6: The Section 7(2) list should include information about the following:

- Anti-harassment orders under Section 10 of the Non-Fatal Offences against the Person Act 1997 (can be made whether or not the person is convicted of harassment);
- Relevant conditions under which a sentence is suspended or part-suspended, relevant here meaning relevant to the victim's physical and psychological welfare;
- Relevant post release supervision order conditions;
- Details of any anti-harassment order made or proposed to be made, under the Criminal Law (Sexual Offences) Act 2017⁴;
- Sex Offender Orders under the Sex Offenders Act 2001

This list is not intended as exhaustive; it may be that there are other orders which should be added to it.

1.5 Section 18: Special measures during criminal proceedings

There should be an obligation on the prosecutor to bring the existence of any specific protection needs report to the attention of the judge. If the judge is not aware of the existence of the report, the victim is reliant entirely on the prosecutor's judgment as to whether the report should be introduced to the court. This puts the victim in a much weaker position than if the judge sees the report automatically in every case. If the judge sees every

³ Now enacted since 22 February 2017, but the online version of the Act is not yet available.

⁴ See previous footnote

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report, it means that the victim's perspective cannot be overlooked. In the Directive, the only restrictions on the rights of a victim to appropriate special measures in court relate to the "rights of the defence" and "the rules of judicial discretion". There is nothing about prosecutors acting as a filter for the application of special measures in every case. This means that a copy of the report will have to be handed to the defence as well, but in practice, their interests are always represented on applications for special measures in any event, so in practice we do not see that complainants would be worse off if judges were to have copies of every specific protection needs report.

Recommendation 7: There should be an obligation on the prosecutor to give the judge a copy of every report on specific protection needs which comes into his/her possession.

1.6: Section 26: Amendments to Criminal Evidence Act 1992

Under this section heading it is necessary to replicate the text of one of the proposed amendments, as follows:

"(c) in section 14—

(i) in subsection (1)(a), by the substitution of "a relevant offence" for "an offence to which this Part applies",

(ii) by the insertion of the following subsection after subsection (1):

"(1A) Where—

(a) a person is accused of an offence, other than a relevant offence, and

(b) a victim of the offence who is under 18 years of age, is giving, or is to give, evidence through a live television link, the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the matters referred to in section 14B, the interests of justice require that any questions to be put to the victim be put through an intermediary, direct that any such questions be so put.", and

(iii) in subsection (3), by the insertion of "or (1A)" after "subsection (1)",

It appears that the effect of this is to allow for victims under the age of 18 only to have **questions** put to them through an intermediary, if they are giving evidence through a live television link – provided that the offence concerned is not a "relevant offence" ie which broadly speaking, is either sexual or otherwise of a violent nature. While there is nothing wrong with this in principle, it does not go far enough, in exactly the same way that Section 14 of the existing Criminal Evidence Act 1992 as amended, does not go far enough, either. Neither this proposed new subsection nor the existing Section 14 allows for the **victim's responses** to be mediated by the intermediary. This means that a witness in need of an intermediary is immediately put at a disadvantage, as his/her ability to communicate her testimony will depend on his/her ability to respond to the mediated questions without the benefit of having those responses translated for the decision makers.

In our respectful submission, this new version of Section 14 should be amended to cover not just the questions to the victim, but also the **responses**. In this we are following the recommendation made by the Law Reform Commission in its Report on Sexual Offences and

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Capacity to Consent⁵. Further, we submit that the inclusion of the responses in the remit of the intermediary is in line with international best practice on how to treat vulnerable witnesses⁶.

Recommendation 8: The remit of any intermediary used in Court should be broadened in this Section to include the responses of any witness who is deemed to be in need of an intermediary's services in order to give his or her best evidence in court, in the interests of justice;

Recommendation 9: This legislation should be amended to set out the circumstances in which the services of an intermediary may be sought and used to assist a witness who may have, or has, any difficulty in giving oral evidence to the court;

Recommendation 10: Provision should be made for regulations to be made under this legislation to set out the procedure and best practice guidelines to be followed whenever an intermediary is proposed to be used in court to mediate the responses of a victim or other witness; and

Recommendation 11: Provision should be made, either in this legislation or elsewhere, for regulations to be made governing the recruitment, selection, use and where appropriate, specialist training, of intermediaries whose services are proposed to be used in court, and related matters.

1.8 Section 30: Non-compliance with Act

There is no sanction and/or any meaningful means of redress for breach of any provision of the Act included here.

Recommendation 12: There should be a dedicated structure, such as a Victim Ombudsman Office whose sole remit is reception and investigation of transgressions of the Act. Its procedures should be simple, free, easy to use and swift.

2.0 Omissions:

2.1 Right to Court Accompaniment

It is fair to say that the EU Directive does not itself provide for a right of accompaniment of victims, even those with identified specific protection needs, to Court. Nevertheless, such support is invaluable to victims of crime, and in the case of victims of sexual violence, it is a very powerful support which enables many to go through the traumatic and harrowing

⁵ Available online through this weblink: http://www.lawreform.ie/_fileupload/Reports/r109.pdf. In the UK, it is the norm that the use of intermediaries is considered for all child witnesses, for example.

⁶ See for example, the relevant guidelines on the use of intermediaries in court in the UK: <http://www.theadvocatesgateway.org/images/toolkits/16-intermediaries-step-by-step-2016.pdf>

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experience of giving live evidence of intimate crimes to a group of strangers. We note that there is now a form of precedent in the new Domestic Violence Bill 2017 at Section 22⁷, which allows for applicants for Domestic Violence orders to be accompanied by a person of their choice, including a support worker.

Recommendation 13: RCNI proposes that a right for victims of sexual violence (at least) to be accompanied to Court, throughout the proceedings, should be included in the Bill.

2.2 Pre-recorded Evidence:

We note that this Bill does not include any universal right for victims to have their Garda statement pre-recorded and allowed to stand as their direct evidence (evidence in chief) in Court. RCNI submits that at least in the case of victims of sexual violence over the age of 18 (including those who suffered sexual violence as children and are now adults), there should be a presumption that evidence in chief should be recorded by An Garda Síochána and played to the Court in place of their giving live evidence.

Recommendation 14: RCNI recommends that the proposed new Section 16 of CEA should be re-amended to allow for the pre-recorded statements of all victims of sexual violence, regardless of age or capacity, to stand as their evidence in chief in court, “unless the Court sees good reason to the contrary”.

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⁷ Available online at: <http://www.oireachtas.ie/documents/bills28/bills/2017/1317/b1317s.pdf>