



RCNI Submission to the Joint Oireachtas Committee on Justice and Equality on the Criminal Justice (Victims of Crime)(Amendment) Bill 2018 dated March 2019

Introduction

RCNI welcomes this Criminal Justice (Victims of Crime) (Amendment) Bill 2018 very much. It is necessary, because all victims of sexual violence who are contemplating making a criminal complaint, and those who have already made such a complaint but in whose case no-one has yet been charged, need legal advice and information. The criminal justice system, though it has improved, remains very daunting for victims of sexual violence seeking justice. The intimate nature of these offences, their association with still powerful “rape myths” and the fear of being re-victimised in cross-examination, all combine to make many victims reluctant to make and sustain a criminal complaint. That said, access to legal advice and information from the earliest stages of the criminal justice process can and does empower victims both to make and to sustain a complaint.

Victims of sexual offences can access some free legal advice from the Legal Aid Board, regardless of their means, but this is limited: only victims of certain sexual offences, namely any form of rape, aggravated sexual assault, defilement offences, incest offences and certain human trafficking offences, can access this advice and then only once a prosecution is in being¹. In this regard, it should be noted that by far the most commonly prosecuted sexual offence is sexual assault and that some two-thirds of sexual offences reported to An Garda Síochána, do not result in prosecution.

While RCNI can provide some legal support to individual victims on an ad hoc basis because it is funded to do so by the Department of Justice through Cosc, its assistance is limited to that provided by one part-time staff member with other responsibilities. This additional assistance is not adequate to meet all victims’ needs for legal advice and support from the offence to the conclusion of criminal proceedings and beyond.

This Submission

This submission takes the form of an unofficially consolidated version of Section 17 of the Criminal Justice (Victims of Crime) Act 2017, amended to include the operative provision in the Criminal Justice (Victims of Crime)(Amendment) Bill 2018, and annotated underneath the combined text with a series of numbered comments.

Special Measures during Investigation:

Unofficial Consolidation of

¹ See Section 26 (3A) and (3B) Civil Legal Aid Act 1995 (as amended)



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Section 17 (1) Criminal Justice (Victims of Crime) Act 2017 as commenced and

Section 2 Criminal Justice (Victims of Crime) (Amendment) Bill 2018, as at 11 March 2019, relevant subsection to be inserted by Section 2 thereof in purple below:

“17. (1) The special measures which may be implemented in respect of a victim during the course of an investigation of an alleged offence include the following:

(a) that any interview with the victim—

(i) be carried out in premises designed or adapted for that purpose,

(ii) be carried out by or through persons who have been trained for that purpose, and

(iii) where there is more than one interview, be carried out, where possible, by the same member or members of the Garda Síochána or the same officer or officers of the Ombudsman Commission, as the case may be;

(b) where the alleged offence involves sexual violence, gender-based violence or violence in a close relationship, that the victim be informed of his or her right to request that interviews are carried out by a person of the same sex as him or her.

(c) where the alleged offence involves sexual violence, gender-based violence or violence in a close relationship, that the victim be provided with relevant information and legal advice by a solicitor funded by the Minister advising the victim of the process involved and actions required in order for criminal proceedings in respect of the alleged offence to be brought and heard”.

RCNI Commentary

Text: “...during the course of an investigation...” (Section 17(1) top two lines)

- (1) Does the right come to an end, then, once the investigation is completed and the file goes to the DPP? I wonder if the new subsection should not go under Section 7 (information to be provided to the victim when s/he first reports the crime) instead. Many victims of sexual violence want to know all about the criminal justice process, etc, **before** they decide whether to bring a formal complaint (1) and many also have queries throughout the criminal justice process **after** the investigation has been completed indeed, even after all court proceedings have been completed sometimes (2);

Text: “...that the victim be provided with relevant information and legal advice by a solicitor funded by the Minister advising the victim of the process involved and actions required in order for criminal proceedings in respect of the alleged offence to be brought and heard” (Section 17 (1) (c):

- (2) Perhaps instead of “provided” have “be informed of his or her right to be provided with legal advice from a Legal Aid Board solicitor about the criminal justice process to be followed so



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that criminal proceedings in respect of the alleged offence may be brought and heard”, or similar - and have the new provision amending not S 17 but S 7, as suggested above; also

- (3) Consider amending Section 26 (3A) of the Civil Legal Aid Act 1995 so that it is clear that legal advice can be provided by the Legal Aid Board free of charge regardless of the sexual offence and from the moment that the offence takes place.
- (4) As drafted, the victim **must** be advised by a solicitor [etc]. But – not all victims want legal advice (sometimes because they are Garda officers or lawyers themselves). We submit it makes more sense for them to be informed of their right to it, and that should be **before** they make any formal statement to AGS.
- (5) It seems to us that the responsibility for providing said relevant information and legal advice is unclear – who has to do it? The Minister does not fund solicitors to give advice to victims, the Legal Aid Board does. MJE does fund RCNI to provide legal support for victims of sexual violence. This is part of the Legal Policy Director role and takes place on an ad hoc basis. RCNI would need considerably more resources if we were to take on providing this service nationally and making it available to all victims considering reporting. We assume that it is envisaged that the Legal Aid Board would take it on.
- (6) It could be objected that advising the victim of the process involved and actions required in order for criminal proceedings in respect of the alleged offence to be brought and heard – is exactly what relevant members of An Garda Síochána are obliged to do under S 7 of the Act. The point about having legal advice is that it is independent and its main focus is on the client’s, ie the victim’s, own interests, even, perhaps especially, where these **do not** coincide with those of investigators or prosecutors. We would be inclined to simplify this a whole lot and say simply, “be provided with independent legal advice by a solicitor”, full stop [or at most, then continue with]”about any actual or contemplated proceedings with the respect to the offence or offences alleged by him or her”.

RCNI considers that even with greater access to legal advice funded by the State, victims of sexual crime would still benefit greatly from the individually tailored, wraparound support which could be provided by Support and Advocacy Workers based in Rape Crisis Centres. Such workers could provide Garda and Court Accompaniment and could liaise where necessary between the victim and State and other agencies.

It is hoped that these comments are useful to the Committee.

RCNI is very willing to discuss any of the points raised in its comments further, to do its best to provide any further information requested, to give an oral presentation to the Committee,



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and generally to assist in any appropriate way with the progress of this important Bill through the Oireachtas.

RCNI looks forward to hearing from the authors of this Bill in due course.

RCNI/LPD/Final

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Dated this 29th day of March 2019

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