



**RCNI Submission to the Joint Oireachtas on Justice,
Defence and Equality
on the Revised General Scheme of Criminal Justice
(Victims of Crime) Bill 2015**

July 2015

RCNI Submission to the Joint Oireachtas Committee on Justice, Defence and Equality on the Revised General Scheme of the Criminal Justice (Victims of Crime) Bill 2015

Introduction: – Rape Crisis Network Ireland

Rape Crisis Network Ireland is the national network organisation for Rape Crisis Centres. Its work includes policy development, 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 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 its member Centres as they grapple with the wide range of issues which affect survivors.

More and more survivors of sexual violence are now reporting the offences committed against them to An Garda Síochána. RCNI National Rape Crisis Statistics for 2014 tell us that 33% of all survivors reported to the Guards, and 48% of survivors of adult sexual violence alone, made such a report. However, these victims are not the only ones covered by the EU Directive 2012/2 establishing minimum standards on the rights, support and protection of victims of crime, because the reach of the Directive, and hence that of any transposing legislation, extends beyond those victims who make the difficult decision to report offences against them to the Guards.

RCNI is concerned to ensure that all victims of sexual violence, including those who have not made a complaint to the Guards, are encouraged and supported not only by specialist NGO services, but by all relevant State agencies, and that this approach is underpinned by this important legislation as far as possible. In the case of these victims, identified as a group with “specific protection needs” under Article 22 of the Directive, it is an enormous challenge to do this effectively because of the intimate nature of the violence suffered and its devastating effect on its victims.

RCNI Submission on the Revised General Scheme of Criminal Justice (Victims of Crime) Bill 2015: structure

This submission will follow the structure of the General Scheme itself, using the same Head and Subhead numbering, with a brief General Comments section at the end.

Head 2: Interpretation

“complaint” means a statement made to a member of the Garda Síochána alleging that the person making it, or another person, has been the victim of a criminal offence

RCNI comments:

- (1) It is not clear what is meant by “complaint” or the word “statement” here. Does the word complaint cover brief verbal reports or phone calls to the Guards made in an emergency situation, or does there have to be some form of written statement taken, however brief? If “complaint” means only a formal written statement taken down by an investigation Garda in longhand, read back to and signed by the victim, then many protections in this Bill will not become available to victims until the early crisis stages of the reporting process are over. This will be too late for them to be effective to protect and support victims in many cases.

RCNI recommends that

- (a) It is put beyond doubt that the word “statement” includes verbal reports and electronic reports, and any written statement that is not a formal one.

“family member”:

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The list of family members does not include “dependants” who are not relatives in direct line or siblings, such as a foster child or elderly relation who is not a parent/grandparent/aunt/uncle. Note that Article 2(b) of the Directive specifically includes “dependants”, regardless of exact family relationship.

While the list mentions “a person who is or was acting in loco parentis to the person”, there is no separate mention that this would include step-parent, adoptive parent, foster parent. With respect, we wonder whether the expression “in loco parentis” is generally understood to include these categories outside legal circles?

RCNI recommends that

- (a) The expression “*sufficiently close connection*” at (e) includes expressly a person who is an economic dependant;
- (b) Either specify that “*parent*” includes step-parent, foster parent, adoptive parent, or specify that a person acting “*in loco parentis*” may (or may not) be a step-parent, adoptive parent, or foster parent;

“*victim*”:

RCNI welcomes the reconfigured, clearer definition of victim, and also the new rider to this definition which reads, “whether or not, in either case, a complaint alleging the commission of an offence has been made, or any offender has been identified, apprehended, charged or convicted in relation to the offence”

Head 4: Information to be provided to victims

The first critical omission here is: victims should be offered information about procedures and services, etc “without unnecessary delay”, according to Article 4(1) of the Directive, and this qualification, or similar wording, should be included in Head 4;

RCNI recommends that:

- (a) The wording on the provision of information should include the phrase “without unnecessary delay”, as in the Directive; and
- (b) The wording at “(b) *services which provide support for victims of crime*” should be expanded to reflect the meaning of Article 4(1)(a) – to read instead, for instance:
“Services which provide support for victims of crime, including specialist support, psychological support, medical support, and alternative accommodation, where relevant”
- (c) The wording should stress that the reason for providing all this information is to enable victims to access their rights as victims;
- (d) The wording should also provide some mechanism by which all this information is provided by or through another “competent authority” where the victim does not make their first contact with An Garda Síochána, but with another official body, such as the Child and Family Agency or a Sexual Assault Treatment Unit;
- (e) Finally in relation to this Head, the very last subparagraph (l) refers to “*available grievance procedures*”. This language connotes grievance procedures in employment or consumer settings. It seems to us that it does not convey the message that victims have a right to information about how to make a complaint because their rights under this legislation have been breached.

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RCNI welcomes the inclusion of the full list of matters on which information should be provided.

Head 5: The making of a complaint

This Head makes no mention of the victim's right to have their legal representative present, in addition to a person of their choice, in Article 20(c) of the Directive. This amounts to a dilution of their rights thereunder.

The wording also makes it very easy for members of An Garda Síochána to exclude accompanying persons from the interview. There is no obligation on them to provide reasons to the victim, which would give him/her an opportunity to meet the objections made and suggest alternatives, rather than face the interview alone and unsupported.

The reality is that many sexual assault investigations are still carried out by non-specialist Gardai, who may have little or even no, experience of this kind of complex and sensitive work. While there is a cohort of Guards with specialist training in interviewing children under 14 and vulnerable adults, and there are some others with extra training in interviewing victims of serious crimes, there are still no specialists in (non-vulnerable) **adult** sexual violence issues. While reporting rates have improved, they are still too low. All these factors mean that the right of accompaniment at Garda interview must be made available to all survivors of sexual violence as far as possible. Of course, there may be very good reason in a particular case for an accompanying person to be excluded. If someone has to be excluded, alternative solutions should be explored with the victim before any decision is taken to proceed with the interview.

RCNI recommends that:

- (a) The Head is altered so as to include the victim's right to have their legal representative present, in addition to a "person of their choice";
- (b) Where a member of AGS makes a **reasoned decision** to exclude an accompanying person from Garda interview, the Head should provide that the decision and the reasons are made clear to the victim, and that
- (c) The Head is altered to ensure that the victim is given a reasonable opportunity to meet the objections on which the decision is based, for example by rescheduling the interview so that another person might attend instead to support the victim.

Head 6: Assessment of a victim where a complaint has been made

(i) The wording at "(1): The member of An Garda Síochána taking a complaint...shall assess [protection measures]" – implies that the assessment will be done, or will be done normally, at the complaint stage. This Subhead underlines the importance of a clear definition of "complaint". It must be made quite explicit that the word "complaint" can encompass oral and brief written complaints made **before** the formal written statement complaint itself is given by the victim to a Garda.

(ii) The *formal written statement of complaint* stage is too late to make an assessment of measures which may be necessary to protect the complainant from "any secondary or repeat victimisation, intimidation or retaliation". Article 22 of the Directive refers to "timely and individual assessment...to identify specific protection needs". For many victims, the formal complaint stage is too late, as they will have been intimidated, harassed, threatened, injured or even killed, in extreme cases, before such an assessment is done.

(iii) The formal complaint taking stage is also a stressful one in itself, involving the generation of a legally binding document the victim knows will be trawled exhaustively by defence lawyers for material through which he/she might be undermined.

(iv) It seems to us clear that the assessment of individual needs should take place **before** the formal written complaint is taken, for these reasons, and also because the special measures listed in Article 23 of the Directive where "specific protection needs" have been identified, relate in part to the police interview (formal statement taking) process itself, that is, these measures need

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to be in place **before** an interview takes place between victim and An Garda Síochána for the purpose of taking the formal written statement.

(v) The scope of the assessment referred to at Subhead 6(2) is not wide enough to transpose the Directive fully. RCNI notes that the revised Subhead does not include any reference to the obligation in Article 22(3) of the Directive to pay “particular attention” to “victims who have suffered considerable harm due to the severity of the crime” - the Subhead wording, “the severity of the offence” and “the degree of harm suffered by the victim”, leaves out of account the important qualification of “victims who have suffered considerable harm”. The Subhead wording does not include any explicit reference either to the obligation to pay particular attention to “victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics”; or to “victims whose relationship to and dependence on the offender make them particularly vulnerable”, nor does it provide, as does the Directive, that “victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered”.

In our respectful submission, it is important that these categories of particularly vulnerable victims of crime should be identified in language that is as close to the language of the Directive as possible, and that the obligation to pay particular attention to them is also included, as the whole aim of Article 22 is to provide for individual assessments which will uncover “specific protection needs”, ie those which are found most often in victims of identified categories of serious crime. Indeed, the phrase “specific protection needs” which is at the heart of Article 22, does not find any equivalent in this Subhead 6(2).

(vi) With regard to the obligations on Garda District Officers to include information about any special measures assessed as being necessary in the Garda file before it reaches the Office of the Director of Public Prosecutions, it seems to us that this Head needs to include a corresponding obligation on the relevant officers and/or agents of the DPP to ensure that any special measures are applied for at the earliest opportunity in court. Our view is that such an obligation would not impugn the DPP’s independence “in the exercise of his or her prosecutorial functions”, as the final decision on any special measure rests with the trial judge.

RCNI recommends that:

- (a) It is clarified through some such wording as, “As soon as possible after an initial report has been made, and in any case in advance of taking the formal complaint in writing from the victim, the member of An Garda Síochána investigating the complaint or another appropriate member, shall assess, in consultation with the victim [etc]...” – that this individual assessment should be done as soon as possible, and should be done in all cases **before** a formal complaint is taken;
- (b) Subheads (1) and (2) should be reworded to make it clear that the aim of individual assessments is to identify “specific protection needs”, and the factors and types of crime listed in Article 22(3) to which “particular attention” must be paid, or “duly considered”, respectively, should be listed expressly in language close to that in the Directive.
- (c) The corresponding obligations on the Gardai to pay particular attention to these factors, and to ensure that the named types of crime are “duly considered”, should be included in Subhead 6(2);
- (d) The Head should include an obligation on the DPP’s representative in court to ensure that any special measures included in the Garda file are applied for in court; and
- (e) The right to be referred with consent should not be qualified in any way by the subjective assessment of the member of An Garda Síochána that the capacity of a victim to contact an appropriate support service is limited, and/or that “he or she might benefit from contact from such a service..” – the sole condition for referral to a support service should be the victim’s consent; and
- (f) The legislation should provide for referral situations where a victim does not have capacity to consent at the time of reporting, and/or is a minor.

Head 7: Information to be provided to victims where a complaint has been made

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- (1) The Head should be qualified to take account of circumstances where the arrival of such an acknowledgement, by post or otherwise, could put the victim at risk (e.g. where s/he shares their home with the accused person and/or that person has access to their correspondence).

RCNI recommends that:

- (a) This Head should allow victims a choice about the timing and means of acknowledgement in writing of their report of a crime, at least in circumstances where the means and timing of the acknowledgement could put the victim and/or others at risk;
- (b) This Head should include the phrase, "without unnecessary delay", as in the Directive, because early access to full and accurate information is reassuring and empowering to victims, helping them to engage with and stay with, the criminal justice process;

Head 8: Information to be provided on request to a victim where a complaint has been made

Article 6 of the Directive says that victims must be notified of their right to receive specified information about their own case, and must be provided with that information, on request. There is no mention under this Head of the obligation to notify victims of their right to information about the case specified therein. This is a subtle but serious omission, as it means that victims do not have to be made aware that they are **entitled** to have the specified information.

Subhead 8(1)(h) provides: "*[will receive information..on..]the release or escape of any alleged offender, at any time prior to the final decision in his or her trial for the offence in any case where it has been assessed under section 6 that the complainant may require protection*". This wording does not transpose the meaning of the Directive, which includes in its ambit both those victims in respect of whom accused persons have always been on bail before trial, and those victims who have not been assessed as requiring protection.

RCNI recommends that:

- (a) The wording of Head 8(1) is amended to clarify the obligation to tell victims of their right to specified information about their own case, as well as to provide that information, on request;
- (b) Subhead 8(1)(h) should be amended to remove the restrictions
 - (i) to victims in respect of whom accused persons have not yet been tried and have spent some time in custody before trial, and to victims who have been already assessed; and to
 - (ii) victims who have been assessed already as requiring protection;
- (c) The phrase "*a brief summary of the reasons*" why the accused person is not prosecuted, or an investigation into the allegations against him is discontinued, in Subheads (b) and (d), should be interpreted in the light of the phrase in Article 11(3) of the Directive: "[Member States shall ensure that they receive] sufficient information to decide whether to request a review of the decision not to prosecute". That is, it should be clarified that any brief summary of the reasons why a decision not to prosecute/not to proceed with/discontinue an investigation was taken, should contain enough information for the victim to decide whether or not to request a review of that decision.

Head 11: Conduct of interviews and medical examinations

Subhead (3): "*[relevant member of AGS shall ensure that] Medical examinations of the victim for the purposes of the investigation of the offence alleged are carried out only where strictly necessary for the proper investigation of the complaint*".

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We are aware that this wording is taken almost verbatim from the Directive, and applaud the general principle. However, RCNI is also aware that complainants in recent sexual violence cases are now able to request forensic medical examinations at Sexual Assault Treatment Units and have their forensic samples stored securely for a given period, so that they do not have to make the difficult decision to make a formal complaint to An Garda Síochána at a time when they are severely traumatised and unable to make an informed decision very easily. This provision needs a proviso, in our view, to the effect that nothing in this section shall be so interpreted as to prevent victims of recent sexual violence from accessing forensic medical examinations at a SATU for the purpose of having forensic evidence samples taken and stored, in accordance with the relevant SATU Guidelines document (now in its 3rd edition, 2014).

It would be a retrograde step if this provision did operate to frustrate the operation of a progressive new regime which has been long in the preparation and whose fruition is the result of lengthy and detailed inter-agency work. In our view, this is one possible unintended consequence which must be avoided at all costs.

RCNI recommends that a proviso in the terms outlined above, is included in the next draft legislation.

Head 12: Attendance at interviews

RCNI recommends that this Head be amalgamated with Head 5, as they are so closely related in theme, and also repeats under this Head its recommendations made under Head 5 above.

Head 13: Informing victim of a decision not to prosecute

Article 11(3) of the Victims' Directive specifies that "Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request".

This Article is not restricted in its ambit to those victims who have already signalled that they wish to be informed of a decision not to prosecute in advance, and it refers to "sufficient information", which or may not be contained in any brief summary provided of the reasons why a decision not to prosecute was taken. RCNI's view is that the most important consideration is that a victim should be provided with enough information to make a decision whether to request a review of a prosecutorial decision. Thus in some cases, it may not be enough to provide a brief summary of these reasons, and the prosecutor (DPP or AGS) should provide additional information where this is warranted.

RCNI recommends that:

- (a) The wording of this Head reflect the wording of the Directive as to timeliness, so that the phrase "without unnecessary delay" is added to the obligation to inform the complainant of the reasons [etc] why that decision was taken;
- (b) The restriction to complainants who have already signalled that they wish to be informed of the reasons, is removed, as many of these may not be already aware that they are entitled to the **reasons**, and to request a review of the decision to prosecute;
- (c) The wording of the Head should reflect the obligation in the Directive on prosecutors (AGS or DPP) to provide the complainant with sufficient information to decide whether to request a review of the decision. While a brief summary may be sufficient in some cases, it will not meet the Directive's requirement of "sufficient information" in others.

Head 14: Review of a decision not to prosecute

RCNI's view is that this wording should also reflect the obligation on prosecutors (DPP and AGS) to inform complainants that they have a right to request a review of any decision not to prosecute in their case (ie are entitled to request it, as opposed to "may" request it).

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The recommendation (a) under Head 13 above is repeated under this Head, both in relation to informing the complainant of their right to a review and how to proceed with it, and also in relation to informing the complainant of the result of any review.

Head 15: Special measures during investigation

These measures reflect the relevant Articles 23(1) and 23(2) of the Directive, to a great extent. They underline the point made earlier in these Observations, that individual assessment of victims to identify specific protection needs, must be done at the earliest possible stage, and certainly before the stage of formal Garda interview for statement taking purposes. The provisions restricting the conduct of interviews to those Gardai “who are specialists in interviewing either in relation to particular type of offence or the particular class of victim” are welcome as a first step towards the conduct of entire investigations of sexual violence crimes by specialists only.

With regard to the definition of “sexual offence”, RCNI recommends that:

- (a) When the Bill itself is being drafted, care is taken to ensure that the definition used is the latest one, so that the newer offences such as grooming offences, are included.

Head 16: Special Measures during trial

(i) These measures should not be available only on the application of the prosecutor, whose role is not mentioned in any of the qualifications on the availability of special measures in Article 23(3) of the Directive. This restriction should be removed, and the issue of special measures should be left to the judge alone to decide in each case. S/he should also be obliged to take into account the individual assessment already done by An Garda Síochána.

(ii) Also, there is no mention of the requirement under Article 23(3)(c) of the Directive, for “measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence”. This should be rectified, as it goes beyond the scope of defence “Section 3” applications for leave to have evidence of “other sexual experience” admitted.

(iii) Victims assessed as having specific protection needs at least, should have an additional right to be accompanied in court by a person of their choice (such as a court accompaniment volunteer), unless the judge makes a **reasoned decision** to the contrary. Where objection is taken to a particular person accompanying the victim in court, and this is upheld by the judge on a reasoned basis, the victim should be given a reasonable opportunity to replace that person with a suitable replacement. This support has been shown to be of immense value to victims of crime as they undergo court proceedings.

RCNI recommends that either:

- (a) The Head is amended to place an obligation on prosecutors to apply for special measures assessed already as being necessary to address specific protection needs of any given victim(s); or
- (b) The Head is amended to place an obligation on judges to address the issue of special measures assessed already as being necessary to meet specific protection needs of any given victim(s); and also that
- (c) The Head is amended to place an obligation on the judge to consider the individual assessment already done by An Garda Síochána;
- (d) The Head is amended to provide for a prohibition on questioning of the victim on his or her private life, which in the view of the trial judge, is not necessary because it is not relevant to the offence(s) before the court; and
- (e) The Head is amended to provide for a right to court accompaniment for victims (at least those assessed as having “specific protection needs”), unless the judge makes a reasoned decision to exclude a particular individual, and in such circumstances, the victim should be given a reasonable opportunity to produce a suitable substitute.

Head 17: [special measures for] child complainants

RCNI has two general comments to make about this Head:

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- (1) The interaction between this Head and Part 5 (Criminal Evidence) of the forthcoming Criminal Law (Sexual Offences) Bill 2015, which covers special measures in relation to child victims of sexual crimes only, in some detail, needs to be considered;
- (2) With regard to Head 17(3) relating to information being furnished to a parent or guardian of a child victim, consideration needs to be given to exceptions/other provisions being made to address situations where the parent or guardian is the subject of the complaint, and also situations where to provide such information to a parent/guardian, would put the child victim at risk of harm.

Head 18: Request to Irish Prison Service

Article 6(5) provides that victims should be informed of any relevant measures issued for their protection in case of release or escape of the offender, in addition; and also stipulates that information about release or escape [etc] should be provided “without unnecessary delay”.

RCNI recommends that:

- (a) The obligation on the Prison Service to inform complainants of any release or escape, should be qualified as being “without unnecessary delay”, or other wording conveying a similar meaning; and
- (b) An obligation should be placed on a responsible member of An Garda Síochána, or of the Prison Service, to inform the complainant of any “relevant measures issued for their protection” in case of the release or escape of the offender.”

Head 20: Training

In our view, there are important gaps here:

- (1) The Directive specifies at Article 25 that Member States shall ensure that “officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training[..]”. This Head only specifies that training shall be provided to staff members, not that the staff members have to receive it – the two things are not the same;
- (2) The Directive specifies that Member States request that those responsible for training judges, prosecutors and other lawyers, should make training available to all these groups to increase their awareness of victims’ needs. In our respectful submission, responsibility should be placed on some agency to ensure that such requests are not only made, but followed up and supported with additional resources where appropriate;
- (3) There is no mention of “general and specialised training” as in the Directive. What is envisaged by the Directive is not simply one level of training, but also some specialised training appropriate to particular roles. In our submission, formal statements of complaint in relation to sexual offences should always be taken by Gardai with specialist training in sexual violence issues. While there is a cadre of Gardai with specialist training in interviewing child victims of sexual violence under 14 and vulnerable persons who are victims of sexual crime, there are no specialists with training in adult sexual violence issues. It is time to close that gap in support and protection for adult victims of sexual violence;
- (4) There is no mention in this Head of how the content of the training given is to be determined and evaluated. It is important that outside perspectives, especially victim-related perspectives, are included in training programmes provided/offered.

RCNI recommends that:

- (a) The Head be reworded so as to stress the obligation on the relevant agencies to ensure that their staff members attend and complete, training provided to them by the agencies, which is appropriate to their role to increase their awareness of victims’ needs [etc];

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- (b) The Head be reworded to include the obligation on a given State agency to request that those responsible for training judges, prosecutors and other lawyers, make available appropriate training to these groups to increase their awareness of victims' needs [etc];
- (c) All specialist training at least (and ideally all general training also) should include input from outside experts in particular areas, such as sexual violence, domestic violence, trafficking, hate crime, etc. Such experts could include outside academics and qualified NGO trainers with abundant relevant experience in their own field;

Head 26: Amendment of Criminal Evidence Act 1992

This Head, and the amended version of CEA 1992, are broadly welcomed. RCNI particularly welcomes their application to other victims besides those groups identified in CEA 1992, and emphasises that these suggested amendments should take into account the changes in the latest version of the Criminal Law (Sexual Offences) Bill 2015, Part 5 (Criminal Evidence), so that the two pieces of legislation do not conflict with, but complement each other.

RCNI's view is that all special measures, including those in relation to restrictions on personal cross-examination by accused persons of sexual violence victims proposed at Head 49 of the General Scheme of the Criminal Law (Sexual Offences) Bill 2015, should be made available to all complainants, regardless of age and/or intellectual capacity.

RCNI will submit supplementary observations on special measures for victims of sexual violence once the Criminal Law (Sexual Offences) Bill has been published, to take account of any changes therein.

Meanwhile RCNI recommends that in relation to Evidence through intermediary: as recommended by both RCNI previously and the Law Reform Commission in their 2013 Report, Sexual Offences and Capacity to Consent, RCNI advocates that intermediaries should be allowed to relay answers to the Court, as well as transmit questions, to the complainant.

New Head 30: Grievance procedures

RCNI's view is that as indicated above, the language should be changed so that for example, the phrase "Grievance procedures" is replaced with something which indicates that these procedures are intended to rectify breaches of victims' **rights** under this legislation. "Grievance procedures" is a phrase which is associated with other very different contexts, such as employment law and consumer complaints. Also, whether or not the victim is "dissatisfied" is surely not the point; the point is that the victim's **rights** have (or may have) been breached, and that breach is what should be addressed.

RCNI recommends that the language of this Head is amended to reflect the intention that victims' **rights** will be rectified through the procedures described.

General Comments:

(i) There is no overarching monitoring and evaluation structure for the implementation of this legislation, included in this Bill. In our respectful submission, there should be, as otherwise it will be difficult to measure later progress towards full implementation of the Directive. It might also be appropriate to set up a separate but linked structure to oversee the provision of training, to ensure that it is being delivered and to the best possible standard, and also to ensure that the content includes expert outside input on victims' experiences and perspectives.

(ii) There is also no mention in this Bill of the obligation on Member States to ensure that free victim support services, including specialist services, are made available to victims (regardless of whether they make a formal complaint to the Gardai). Therefore, victims' right to access these services cannot be defended through this legislation. Thus, the Directive is not transposed fully in it. As the State funds victim support services, including specialist services, which are free of charge to victims, already, there is no practical reason not to include a right of access to victim support services, including specialist services, in the legislation. This is what is intended by Article 8 – see this extract from Article 8(3) e.g:

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“Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim”.

(iii) Victims’ right to access support services without having reported the offence to An Garda Síochána under Article 8(5), should be underpinned by placing an obligation both on the State and on non-governmental victim service providers, not to exclude any victim from access to their services on the basis that they have not reported the offence to An Garda Síochána.

Rape Crisis Network Ireland

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Appendix 1: List of RCNI Recommendations: Revised General Scheme of the Criminal Justice (Victims of Crime) Bill 2015

Head 2: It should be put beyond doubt that the word “statement” includes verbal reports and electronic reports, and any written statement that is not a formal one;

The expression “*sufficiently close connection*” at (e) includes expressly a person who is an economic dependant;

Either specify that “*parent*” includes step-parent, foster parent, adoptive parent, or specify that a person acting “*in loco parentis*” may (or may not) be a step-parent, adoptive parent, or foster parent;

Head 4: The wording on the provision of information should include the phrase “without unnecessary delay”, as in the Directive; and

The wording at “(b) *services which provide support for victims of crime*” should be expanded to reflect the meaning of Article 4(1)(a) – to read instead, for instance:

“Services which provide support for victims of crime, including specialist support, psychological support, medical support, and alternative accommodation, where relevant”

The wording should stress that the reason for providing all this information is to enable victims to access their rights as victims;

The wording should also provide some mechanism by which all this information is provided by or through another “competent authority” where the victim does not make their first contact with An Garda Síochána, but with another official body, such as the Child and Family Agency or a Sexual Assault Treatment Unit;

Finally in relation to this Head, the very last subparagraph (l) refers to “*available grievance procedures*”. This language connotes grievance procedures in employment or consumer settings and should be amended to convey the idea that mechanisms exist to ensure redress for breaches of victims’ **rights**.

Head 5: The Head should be amended so as to include the victim’s right to have their legal representative present, in addition to a “person of their choice”;

Where a member of AGS makes a **reasoned decision** to exclude an accompanying person from Garda interview, the Head should provide that the decision and the reasons are made clear to the victim, and that

The Head should be amended to ensure that the victim is given a reasonable opportunity to meet the objections on which the decision is based, for example by rescheduling the interview so that another person might attend instead to support the victim.

Head 6: It should be clarified through some such wording as, “As soon as possible after an initial report has been made, and in any case in advance of taking the formal complaint in writing from the victim, the member of An Garda Síochána investigating the complaint or another appropriate member, shall assess, in consultation with the victim [etc]...” – that this individual assessment should be done as soon as possible, and should be done in all cases **before** a formal complaint is taken;

Subheads (1) and (2) should be reworded to make it clear that the aim of individual assessments is to identify “specific protection needs”, and the factors and types of crime listed in Article 22(3) to which “particular attention” must be paid, or “duly considered”, respectively, should be listed expressly in language close to that in the Directive.

The corresponding obligations on the Gardai to pay particular attention to these factors, and to ensure that the named types of crime are “duly considered”, should be included in Subhead 6(2);

The Head should include an obligation on the DPP’s representative in court to ensure that any special measures included in the Garda file are applied for in court; and

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The right to be referred with consent should not be qualified in any way by the subjective assessment of the member of An Garda Síochána that the capacity of a victim to contact an appropriate support service is limited, and/or that “he or she might benefit from contact from such a service..” – the sole condition for referral to a support service should be the victim’s consent;

The legislation should provide for referral situations where a victim does not have capacity to consent at the time of reporting, and/or is a minor.

Head 7: This Head should allow victims a choice about the timing and means of acknowledgement in writing of their report of a crime, at least in circumstances where the means and timing of the acknowledgement could put the victim and/or others at risk;

This Head should include the phrase, “without unnecessary delay”, as in the Directive, because early access to full and accurate information is reassuring and empowering to victims, helping them to engage with and stay with, the criminal justice process;

Head 8: This Head should allow victims a choice about the timing and means of acknowledgement in writing of their report of a crime, at least in circumstances where the means and timing of the acknowledgement could put the victim and/or others at risk;

This Head should include the phrase, “without unnecessary delay”, as in the Directive, because early access to full and accurate information is reassuring and empowering to victims, helping them to engage with and stay with, the criminal justice process;

Head 13: The wording of this Head reflect the wording of the Directive as to timeliness, so that the phrase “without unnecessary delay” is added to the obligation to inform the complainant of the reasons [etc] why that decision was taken;

The restriction to complainants who have already signalled that they wish to be informed of the reasons, should be removed, as many of these may not be already aware that they are entitled to the **reasons**, and to request a review of the decision to prosecute;

The wording of the Head should reflect the obligation in the Directive on prosecutors (AGS or DPP) to provide the complainant with sufficient information to decide whether to request a review of the decision. While a brief summary may be sufficient in some cases, it will not meet the Directive’s requirement of “sufficient information” in others.

Head 14: RCNI’s view is that this wording should also reflect the obligation on prosecutors (DPP and AGS) to inform complainants that they have a right to request a review of any decision not to prosecute in their case (ie are entitled to request it, as opposed to “may” request it).

The recommendation (a) under Head 13 above is repeated under this Head, both in relation to informing the complainant of their right to a review and how to proceed with it, and also in relation to informing the complainant of the result of any review.

Head 15: With regard to the definition of “sexual offence”, RCNI recommends that when the Bill itself is being drafted, care is taken to ensure that the definition used is the latest one, so that the newer offences such as grooming offences, are included.

Head 16: RCNI recommends that either:

- (a) The Head is amended to place an obligation on prosecutors to apply for special measures assessed already as being necessary to address specific protection needs of any given victim(s); or
- (b) The Head is amended to place an obligation on judges to address the issue of special measures assessed already as being necessary to meet specific protection needs of any given victim(s); and also that

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- (c) The Head is amended to place an obligation on the judge to consider the individual assessment already done by An Garda Síochána;
- (d) The Head is amended to provide for a prohibition on questioning of the victim on his or her private life, which in the view of the trial judge, is not necessary because it is not relevant to the offence(s) before the court; and
- (e) The Head is amended to provide for a right to court accompaniment for victims (at least those assessed as having “specific protection needs”), unless the judge makes a reasoned decision to exclude a particular individual, and in such circumstances, the victim should be given a reasonable opportunity to produce a suitable substitute.

Head 17: The interaction between this Head and Part 5 (Criminal Evidence) of the forthcoming Criminal Law (Sexual Offences) Bill 2015, which covers special measures in relation to child victims of sexual crimes only, in some detail, needs to be considered;

With regard to Head 17(3) relating to information being furnished to a parent or guardian of a child victim, consideration needs to be given to exceptions/other provisions being made to address situations where the parent or guardian is the subject of the complaint, and also situations where to provide such information to a parent/guardian, would put the child victim at risk of harm.

Head 18: The obligation on the Prison Service to inform complainants of any release or escape, should be qualified as being “without unnecessary delay”, or other wording conveying a similar meaning; and

An obligation should be placed on a responsible member of An Garda Síochána, or of the Prison Service, to inform the complainant of any “relevant measures issued for their protection” in case of the release or escape of the offender.”

Head 20: The Head should be reworded so as to stress the obligation on the relevant agencies to ensure that their staff members attend and complete, training provided to them by the agencies, which is appropriate to their role to increase their awareness of victims’ needs [etc];

The Head should be reworded to include the obligation on a given State agency to request that those responsible for training judges, prosecutors and other lawyers, make available appropriate training to these groups to :

All specialist training at least (and ideally all general training also) should include input from outside experts in particular areas, such as sexual violence, domestic violence, trafficking, hate crime, etc. Such experts could include outside academics and qualified NGO trainers with abundant relevant experience in their own field;

Head 26: In relation to Evidence through intermediary: as recommended by both RCNI previously and the Law Reform Commission in their 2013 Report, Sexual Offences and Capacity to Consent, RCNI advocates that intermediaries should be allowed to relay answers to the Court, as well as transmit questions, to the complainant.

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