



# VICTIM IMPACT STATEMENTS/ REPORTS: A Guide for Victim Supporters from Rape Crisis Network Ireland

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### Definition of Victim Impact Statement

A Victim Impact Statement is a statement, prepared by either the victim of the offence of conviction (primary victim), or by a family member of the primary victim. The statement is intended to convey to the sentencing judge the effect (whether long term or otherwise) that the offence of conviction has had on the victim's life.

### Victim Impact Statement: What should it contain?

The statement should include an account of the effect of the offence of conviction on the victim's physical, emotional, psychological and financial wellbeing together with any other effect of the offence on the victim.

### When are Victim Impact Statements used?

The victim's account is to be furnished to the sentencing judge subsequent to conviction and prior to sentencing. The Victim Impact Statement must relate to the offences for which the accused has been convicted.

### Does a victim have to supply a Victim Impact Statement?

Under the existing legislative provisions Victim Impact Statements are not mandatory.

### What does the sentencing judge do with the Victim Impact Statement?

A court shall, upon application by the victim, hear the evidence of the victim as to the effect of the offence on them. Further, when imposing sentence for an offence of conviction for which the victim is entitled to and does submit a Victim Impact Statement, the court must take into account, and it may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the victim.

### Where can I find the law on Victim Impact Statements?

Victim Impact Statements were sought and used in the Irish Criminal Justice System in an ad hoc manner prior to being given legislative recognition **under Section 5 of the Criminal Justice Act 1993**. Section 5 has been amended under the provisions of **Part 2 of the Criminal Procedures Act 2010**. Part 2 of the 2010 Act is titled "Impact of Crime on Victim". See APPENDIX I at end of this booklet.

### Are Victim Impact Statements and Victim Impact Reports the same thing?

Sometimes a distinction is made between a Victim Impact Statement and a Victim Impact Report, the former being a statement made directly by the victim to the court, the latter a report written by another person furnishing an assessment of the effects of the offence on the victim. Both are permissible **under Section 5 of the Criminal Justice Act 1993 as amended**. The Report should be attached to the Victim Impact

Statement and presented to the Court as an appendix to the Statement, unless of course the judge orders otherwise.

**NOTE: Throughout this leaflet, notes about Victim Impact Statements apply equally to Victim Impact Reports.**

**Section 5 as amended** ensures that the victim of crime has a right to be heard and that the Judge must consider any effect (whether long term or otherwise) of the offence of conviction on the victim when contemplating sentence.

### WHO CAN MAKE/FURNISH A VICTIM IMPACT STATEMENT/REPORT?

- The victim of the offence of conviction (primary Victim).
- Family member.

The circumstances in which a family member can provide an account to the court of the impact of the crime on the victim or where appropriate on the victim's family is set out in **Section 5 (3) as amended**. The definition of a 'family member' is expansive.

#### Legally, who can be a "family member"?

A family member can be:

- A spouse or partner.
- A child, grandchild, parent, grandparent, brother, sister, uncle, aunt, niece or nephew of the person.
- A person in *loco parentis* of the person.
- A dependant of the person.
- Any other person whom the court considers to have close connection with the person.

#### What are the circumstances where a "family member" can supply a Victim Impact Statement?

1. Where the victim of the offence of conviction **is a child under the age of 14**, the child or his or her parent or guardian may give evidence as to the effect of the offence concerned on the child OR
2. Where the victim of the offence of conviction **is a person with a mental disorder** (not resulting from the offence concerned) the person or a family member may give evidence as to the effect of the offence concerned on that person OR
3. Where the victim of the offence of conviction **is a person with a mental disorder (not resulting from the offence concerned), who is also a child**, the person or his or her parent or guardian may give evidence as to the effect of the offence concerned on that person OR
4. Where the victim of the offence of conviction **is a person who is otherwise incapacitated as a result of the offence**, a family member of the person may give evidence as to the effect of the offence concerned on that person and on his or her family members OR

5. Where **the victim of the offence of conviction has died as a result of the offence**, a family member of the person may give evidence as to the effect of the offence concerned on the victim between the commission of the offence and his/her death (where relevant), and on the family members of the victim.

### **What if more than one family member is willing to give victim impact evidence or supply a Victim Impact Statement?**

In the event that more than one family member seeks to give evidence as to the effects of the offence concerned, the court may direct the family members to nominate one or more family members. Where the family members fail to agree a nominee/s the court can nominate one or more family members as it considers appropriate.

**N.B:** The Victim Impact Statement may be written either by the primary victim, or by a “family member”. It is arguable that the definition of “Family Member” provided in 2010 Act may be sufficiently broad enough to include qualified person such as counsellor, psychologist, medical practitioner etc, who works closely with the victim. In the absence of official guidelines as to the operation of Section 5 we are reliant on the sentencing Courts and Judges to define the limitations of “Family Members”. The instances in which a family member is entitled to submit a Victim Impact Statement are as prescribed in the 2010 Act.

As indicated above, unless the Court directs otherwise, a Counsellor’s Report should always be attached to the Statement as an Appendix.

### **OFFENCES TO WHICH A VICTIM IMPACT STATEMENT CAN BE MADE**

The victim’s entitlement to give an impact statement is restricted to the following offences:

- A sexual offence within the meaning of the **Criminal Evidence Act 1992**.
- An offence involving violence or the threat of violence to a person.
- An offence under the **Non-Fatal Offences against the Person Act 1997**.
- An offence consisting or attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of one of the above.

### **Are there any restrictions on the content of the Victim Impact Statement?**

The Victim Impact Statement can only refer to those offences that the offender has been charged and convicted of in the court.

## CONTENTS OF THE VICTIM IMPACT STATEMENT

**Section 5 (2)** requires the sentencing judge for an offence to which the section applies to take account of any effect of the offence on the person against whom the offence was committed.

The victim impact report should have regard to, but is not limited to, the:

- physical,
- psychological,
- financial,
- emotional, and
- educational

effects that the offence of conviction has had on the victim. The information furnished has to be accurate and reliable and if necessary withstand cross examination.

### **Is there any formal information which should be included in any Victim Impact Statement?**

Yes. The Victim Impact Statement should identify the victim, contain an acknowledgement that the victim does not object to the statement being given to the court, include the full name of the person who wrote the statement and be signed and dated by that person. If written by someone other than the primary victim it should clearly identify the primary victim and the nature and relationship between the primary victim and the author.

### **Is there an official, specific format which Victim Impact Statements should follow?**

Victim Impact Statements have not been standardised and we lack official guidelines as to their structure and content.

### **What should be the main focus of the Victim Impact Statement?**

Attention should be focused on the impact of the offence for which the sentence is being imposed, and not any other offence with which the offender may have been originally charged or tried. The sole purpose of the Victim Impact Statement is to describe the impact of the offence of conviction. It is not its purpose to re-present or rewrite the book of evidence or to place a stamp of proof on any alleged criminal behaviour which was not prosecuted or for which there was no conviction following trial.

### **What should definitely not be included in a Victim Impact Statement?**

Whoever is responsible for producing the Victim Impact Statement must take great care to avoid the inclusion of any material that might be seen to prejudice the convicted person in the eyes of the sentencing judge. **General observations of a derogatory nature, such as personal or racist abuse, about the convicted person are undesirable and unfair.** The convicted person has a right to cross-examine the maker of such statements. Victims should be advised that their opinion as to the sentence to be imposed should not be included in the Victim Impact Statement.

### **Is the Victim Impact Statement the only or the main information which the judge takes into account on sentencing?**

The general impact of a crime on a victim is a factor in sentencing, but that the nature of the offence and the offender's personal circumstances are the key issues, because criminal law is an action between the state and the offender, rather than between the offender and the victim. So care must be taken in each case to ensure that the convicted person is not in any way unfairly prejudiced as a result of any material contained in a Victim Impact Statement. It is one thing for a victim to describe the effects of the offence in vivid and emotive terms; this is permissible. It is quite another to claim that a more serious offence has been committed or that the convicted person has offended more frequently than is reflected in the terms of his guilty plea or jury verdict – this is **not allowed**.

### **What does the prosecution lawyer have to do with the Victim Impact Statement?**

The prosecution is normally responsible for tendering the Victim Impact Statement to the court. The prosecution also bears a responsibility to ensure that a Victim Impact Statement which manifestly fails to confine itself to the impact of the offence of conviction on the victim is either withdrawn or amended.

### **A general principle when writing a Victim Impact Statement**

Victim Impact Statements must fully serve their statutory purpose but should not be allowed to trespass outside the reasonable ambit of that purpose.

### **Victim Impact Statements and the criminal law**

A Victim Impact Statement is subject to the same rules of admissibility, etc, as any other evidence in a criminal case. A victim who invokes his/her rights **under section 5 of the Act of 1993** and who makes use of his right in a manner or purpose other than those specified in the section is subject to the ordinary processes of the court, including abuse of process.

The power to receive Victim Impact evidence conferred by section 5 is independent of both prosecution and defence. The victim is not, for this purpose, a prosecution witness but may exercise the right conferred by the section by indicating to the court during the sentencing hearing that he wishes to give evidence. The right includes the giving of evidence with the assistance of a solicitor or counsel solely by way of evidence in chief. The prosecution and defence have the right to cross examine the victim on the evidence given.

### **Procedure in relation to Victim Impact Statements**

Currently the defence are given a copy of the Victim Impact Statement in advance: this allows objections to be raised regarding the contents.

Once the Victim Impact Statement is accepted, the victim or the victim's representative may read out part or all of the statement to the court. The reading of the Victim Impact Statement to the court is optional and voluntary. In certain circumstances the victim impact evidence can be given via television link, see below.

## NEW RESTRICTIONS ON THE USE OF VICTIM IMPACT STATEMENTS (2010 ACT)

The **2010 Act** allows Judges to impose bans, in the interest of justice, on the **broadcast or publication of all or parts of the Victim Impact Statements/reports**. In the absence of such a restriction the Victim Impact Statement becomes part of the court file and may become a public document, except in relation to children.

### ABSENCE OF A VICTIM IMPACT STATEMENT

Where no evidence is given in relation to the effect of the offence of conviction on the victim the court shall not draw any inference that the offence has had little or no effect (whether long term or otherwise) on the victim or where appropriate on the victim's family members.

### SPECIAL PROVISIONS in relation to VIDEO LINK EVIDENCE:

**Children and people suffering from a mental disability** will be allowed to give a statement via video link.

**Section 5 of the 2010 Act** makes provision to allow a **child, a person with a mental disorder, or any other person with the leave of the court** to make a Victim Impact Statement by means of live television link.

**NOTE for Victim Supporters dealing with Victims who are Children or Young People under 18 in particular: Section 5(5)(a) of the 2010 Act also** gives power to the judge to restrict or forbid publication of all or any part of a Victim Impact Statement "in the interests of justice". This provision could be used to ensure that not all the details in a Victim Impact Statement are made public, as this can **sometimes be particularly harrowing for victims who are children and young people**.

### SPECIAL PROVISION for INTERMEDIARIES for CHILDREN OR PEOPLE WITH A MENTAL DISORDER

**Section 6 of the 2010 Act** makes provision for any questioning of a child or a person with a mental disorder in relation to his or her Victim Impact Statement to be done **via an intermediary**. The intermediary will be appointed by the court to act in that capacity. The court may appoint an intermediary where the age or the mental condition of a child or a person with a mental disorder is such that it is in the interest of justice that the questions be put through an intermediary.

## APPENDIX 1

### Legislation

Section 4 of the Criminal Procedures Act 2010 amends section 5 of the Criminal Justice Act 1993. Section 5 as amended is as follows:

5. (1) *This section applies to -*
- (a) a sex offence within the meaning of the Criminal Evidence Act 1992,*
  - (b) an offence involving violence or the threat of violence to a person, and*
  - (c) an offence under the Non Fatal Offences Against the Person Act 1997, and*
  - (d) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a), (b) or (c).*
- (2) (a) *When imposing sentence on a person for an offence to which this section applies, a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.*
- (b) For the purpose of paragraph (a), a 'person in respect of whom the offence was committed' includes, where as a result of the offence, that person has died, is ill or otherwise incapacitated, a family member of that person.*
- (3) (a) *When imposing sentence on a person for an offence to which this section applies, a court shall, upon application by the person in respect of whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person.*
- (b) For the purpose of paragraph (a), where the person in respect of whom the offence was committed -*
- (i) is a child under the age of 14 years, the child, or his or her parents or guardian, may give evidence as to the effect of the offence concerned on that child.*
  - (ii) Is*
    - (I) a person with a mental disorder (not resulting from the offence concerned) the person, or a family member,*
    - (II) a person with a mental disorder (not resulting from the offence concerned), who is a child, the person or his or her parent or guardian,**may give evidence as to the effect of the offence concerned on that person.*
  - (iii) Is a person who is ill or is otherwise incapacitated as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned on that person and on his or her family members,*
  - (iv) Has died as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned -*
    - (I) on the person between the commission of the offence and his or her death (where relevant), and*
    - (II) On the family members of the person who has died.*
- (c) A person who has been convicted of an offence to which this section applies may not give evidence pursuant to paragraph (b) in respect of that offence.*

- (d) Where more than one family member seeks to avail of paragraph (b), the court may direct the family members to nominate one or more family members for the purpose of that paragraph.
- (e) Where the court directs the family to nominate one or more family members pursuant to paragraph (d) and the family members are unable to reach agreement, the court may, having regard to the degree of relationship between the family members and the person in respect of whom the offence was committed, nominate one or more family members as it considers appropriate.
- (4) Where no evidence is given pursuant to subsection (3), the court shall not draw an inference that the offence has little or no effect (whether long-term or otherwise) on the person in respect of whom the offence was committed or, where appropriate, on his or her family member.
- (5) (a) The court may, in the interests of justice, order that information relating to the evidence given under subsection (3) or a part of it shall not be published or broadcast.
- (b) if any matter is published or broadcast in contravention of paragraph (a), the following persons, namely -
- (i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
  - (ii) in the case of any other publication, the person who publishes it, and
  - (iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,
- shall be guilty of an offence.
- (c) A person guilty of an offence under paragraph (b) shall be liable -
- (i) on summary conviction, to a fine not exceeding € 5,000 or to imprisonment for a term not exceeding 12 months or to both, or
  - (ii) on conviction on indictment, to a fine not exceeding € 50,000 or to imprisonment for a term not exceeding 3 years or to both.
- (d) Where the offence under paragraph (b) is committed by a body corporate and is proved to have been committed with the consent, connivance or the approval of or to be attributed to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who is acting or purporting to act in such a capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as he or she were guilty of the first-mentioned offence.
- (e) Where the affairs of a body corporate are managed by its members, paragraph (d) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.
- (6) In this section and in sections 5A and 5B, unless the context otherwise requires -
- ‘broadcast’ has the meaning it has in section 2 of the Broadcasting Act 2009;
- ‘child’ means a person under the age of 18;
- ‘family member’ means -
- (a) a spouse or parent of the person,
  - (b) a child, grandson, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the per-

- son,  
(c) a person who is acting in loco parentis to the person,  
(d) a dependant of the person, or  
(e) any other person who the court considers to have been in close connection with the person;

'guardian', in relation to a child, has the meaning it has in the Children Act 2001;

'mental disorder' includes a mental illness, mental disability, dementia or any disease of the mind;

'publish' means publish, other by way of broadcast, to the public or a portion of the public".

## Special Measures

1. The giving of evidence via live television link.
2. Evidence through an intermediary.

Section 5 provides that – The Act of 1993 is amended by the insertion of the following section after section 5:

*"5 A (1) (a) a child or a person with a mental disorder in respect of whom an offence to which section 5 applies was committed, may give evidence pursuant to section 5 (3), whether from within or outside the State, through a live television link unless the court sees good reason to the contrary.*

*(b) Any other person in respect of whom an offence to which section 5 applies was committed may, with the leave of the court, give evidence pursuant to section 5 (3), whether from within or outside the State through a live television link.*

*(2) Evidence given under subsection (1) shall be video-recorded.*

*(3) While evidence is being given pursuant to subsection (1) (except through an intermediary pursuant to section 5B(1)), neither the judge, nor the barrister or solicitor concerned in the examination of the witness, shall wear a wig or gown."*

Section 6 provides that - The Act of 1993 is amended by the insertion of the following section after section 5A:

*"5 B (1) Where a child or a person with a mental disorder is giving, or is to give evidence through a live television link, pursuant to section 5A, the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the age and mental condition of the witness, the interests of justice require that any question to be put to the witness be put through an intermediary, direct that any such question be so put.*

*(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his or her age and mental condition, the meaning of the question being asked.*

*(3) An intermediary referred to in subsection (1) shall be appointed by the court and shall be a person who, in its opinion, is competent to act as such."*