

RCNI Best Practice Standard

Withholding of Information Best Practice Standard

While every care is taken to ensure that this standard accurately reflects current legal obligations, please note that it does not and cannot guarantee to any Centre, and/or any Centre staff member or volunteer, immunity from suit and/or legal liability in civil courts, criminal courts or other tribunal.

1. INTRODUCTION

Our Rape Crisis Centre believes that in all matters concerning our clients their health and well-being is paramount. When those clients are under the age of 18 and/or are specifically vulnerable persons, our Centre accepts that we must comply with our obligations under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. Our Centre also accepts that these obligations may come into play if a client discloses information about offences against other children or other specifically vulnerable persons. The timely and appropriate disclosure of information to An Garda Síochána under this Act may reduce the risk of continuing serious harm occurring to a child and/or specifically vulnerable person.

This Withholding of Information Best Practice Standard aims to protect children and vulnerable persons as well as to set out clearly the responsibilities of our staff and volunteers. For the purposes of this Standard, a child is a person under the age of 18, whether or not ever married, and a vulnerable person is one who fits the definition in Section 1 of the Act. Also for the purposes of this Best Practice Standard, a client is anyone who accesses Rape Crisis Centre services.

In addition to other RCC Best Practice Standards referred to in this document, this Best Practice Standard should be read with the Explanatory Memorandum to the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. A weblink to this document is included in the Appendix. Other relevant documents will be circulated when they become available.

2. GUIDING PRINCIPLES

- a. The right of the client to consent to the disclosure of information about a offence of which she/he is the victim is paramount, within the limits of the legislation;
- b. Client confidentiality will always come second to Withholding of Information formal reporting requirements. However, such reports will be made **only** to An Garda Síochána, and **only** when the client gives consent to this report being made, as far as possible under the legislation.
- c. Reporting obligations contained in the Withholding of Information legislation are **in addition to** our obligations under Children First National Guidance 2011 and eventually, under the new Children First legislation when that comes into force.

3. DEFINITIONS

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Different categories of people referred to in this Act

- **“child”**: person under the age of 18;
- **“vulnerable person”**: **a person who**: has a mental illness or dementia, or is intellectually disabled, or who has a physical disability, in any case which is “of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person, or to report such exploitation or abuse to An Garda Síochána or both”
- **“prescribed organisation”**: one providing services to children and/or vulnerable persons who have suffered injury, harm or damage as a result of physical or sexual abuse, such as a Rape Crisis Centre;
- **“prescribed person”**: a person either employed, or “otherwise engaged”, (for example, on a sessional/contract basis or a volunteer basis), by a prescribed organisation, to provide services in respect of the injury caused by an offence against children or vulnerable persons, which require the exercise of skill and judgment.
- **“designated professions”** are: **registered** medical practitioners, nursing staff, psychologists and social workers – unregistered professionals in any of these categories cannot avail of the defences specific to members of “designated professions”.

4. THE OFFENCES

The legislation makes it an offence for anyone to

- **“fail to disclose”** information “as soon as reasonably practicable” to An Garda Síochána,
- **“without reasonable excuse”** (not defined by the Bill, quite deliberately to allow for unforeseen situations not otherwise covered), if you
 - ♦ **“know or believe”** that a **“offence has been committed by another person against a child or vulnerable person”** (NOT simply have a hunch/suspect/surmise/hear rumour of, etc.), **AND**
 - ♦ you have information about this offence which you **“know or believe”** might be of **“material assistance”**, (help to arrest, prosecute or convict the person concerned) **AND**
 - ♦ this information relates to an offence **covered by the Bill** (offences against the

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person with a **maximum penalty of five years or more** and listed in the Appendix and in the Schedules to the Bill).

5. DEFENCES

When you do not have to report the offence to An Garda Síochána.

5.1: General Defences

- If the client is the victim of the offence and indicates that they do not want you to report it to An Garda Síochána, you don't have to, **unless** that client belongs to certain categories of **vulnerable person** as defined by the Act **or**, in certain circumstances, when the victim is a child under the age of 14.
- There is also a separate **general defence** of "reasonable excuse". For example, the fear of a parent that her violent (ex) partner might harm their children or herself has been cited as a reasonable excuse for failure to disclose his violence to An Garda Síochána.
- In addition to "reasonable excuse", there is also a **general defence** to the offence of withholding information, that means other existing rules of criminal law continue to be valid as good reasons not to report. One example of this is legal professional privilege.
- Please note that the client/victim her/himself does **not** have to report what happened to them to An Garda Síochána.

5.2 Specific Defences

- A "**prescribed person**" (i.e. counsellors and others providing services within **prescribed organisations** specifically for the injury caused to children or vulnerable persons), does not have to report what is told to them by clients about offences committed against themselves, if the client indicates that that is not what they want, generally speaking. In so doing, the prescribed person must have reasonable grounds for forming the view that the offence should not be disclosed to An Garda Síochána.
 - ◆ The view must be based on the protection of the health and well-being of that child or vulnerable person, **AND**
 - ◆ the prescribed person must act in a manner and apply the standards of practice and care "that can reasonably be expected of a prescribed person."
- In addition to prescribed persons and organisations, there is also a separate list of "**designated professions**" to whom similar provisions apply. Please see section 3.

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6. ADDITIONAL INFORMATION ABOUT THE LEGISLATION

- This legislation is **not retrospective**, i.e. it applies only to information which comes to our attention after the passing of the Act (early August 2012). It does cover offences which occurred before that date but which only came to our attention after the passing of the Act.
- This legislation means that we must still continue with our existing Children First 2011 reporting procedures. As Children First includes “reasonable grounds to suspect that...” etc, rather than necessarily, **knowledge or belief** (a much higher standard) it is possible that on occasion, two reports, one to the HSE and one to An Garda Síochána, may have to be made. However, the Act also says that only one report needs to be made to An Garda Síochána, so if for example, a Children First report about an offence has been made to An Garda Síochána in an emergency because HSE are unavailable, a **second** report is not required under this legislation.
- The legislation includes knowledge or belief which may be of material assistance – in relation to offences against children or vulnerable persons, **whenever** they occurred. This means it applies to **historic** child sexual violence.
- To become a “prescribed organisation” employing or otherwise engaging “prescribed persons” an application must be made to, and approved by, the Minister for Justice & Equality. This allows the prescribed persons and organisation to avail of the relevant specific defence.

7. RESPONSIBILITIES

Withholding of Information issues generally arise in one of three ways for Rape Crisis Centres in relation to children. The first is when a survivor discloses historical abuse and there are now children at risk from the same perpetrator. The second is when an adult survivor discloses about a child currently at risk. The third is when a survivor under the age of 18 discloses abuse.

Withholding of Information issues can also arise in a number of situations involving clients with an intellectual disability and/or some form of mental illness.

Any person who **knows or believes** that a serious offence as defined in the Act has been committed against a person under the age of 18 and/or a vulnerable person as defined by the Act, has a statutory responsibility and a duty of care to report their concerns to An Garda Síochána. While individual staff members and volunteers all have **the same** responsibilities in relation to the Withholding of Information legislation, some staff members have additional responsibilities. The serious offences defined in the act are listed in the Appendix.

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7.1 Designated Information Person

We will appoint one staff member as the Designated Information Person. Where feasible, the Designated Information Person will be the **same** person as the Designated Liaison Person under the RCNI Child Protection Best Practice Standard, as the two roles may sometimes overlap in relation to individual clients, and are similar in nature. That staff member is: _____ . When the Designated Information Person is away, _____ is the Backup Designated Information Person. The Designated Information Person, and the Designated Information Person in the absence of the Designated Information Person, has the following responsibilities:

- Familiarise her/himself with the responsibilities and defences set out in the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.
- Maintain proper records on all cases referred to them in a secure, confidential place separate from other client files.
- Keep up to date on current developments regarding practice and legal obligations. This includes additional documentation and information sent out by the RCNI.
- Ensure any necessary reports are made to An Garda Síochána “as soon as practicable”.
- Provide guidance, advice and support to Centre staff and volunteers as needed, and in cases of doubt, seek legal advice from RCNI Legal Policy Director or, if she is unavailable, from another solicitor or barrister.
- Create and maintain links with the Department of Justice and other relevant agencies and resource groups.

7.2 Centre Managers

- Organise training and workshops for staff and volunteers on the Withholding of Information legislation.
- Ensure that this Withholding of Information Best Practice Standard and procedures are followed.
- Ensure that this Withholding of Information Best Practice Standard is reviewed annually.
- Ensure that any feedback on the Standard is communicated to the RCNI so that Centre experience and expertise can inform the updating of the Standard.

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- Create and maintain links with the Department of Justice and other relevant agencies and resource groups.

7.3 All Staff and Volunteers

- At the first available and appropriate opportunity clearly explain to all clients before any service is offered to them by our RCC (other than in a crisis) the limits of client confidentiality under Withholding of Information legislation.
- Get the client to sign the appropriate Withholding of Information Client Consent form indicating that she/he understands the limits of confidentiality. If the client is under the age of 18 and has not been determined to be Gillick competent, the parent, guardian or social worker must also sign the form.
 - ◆ Make sure that the client is given a copy of the Centre's Withholding of Information Client Consent form she/he has signed.
 - ◆ Give the completed original hard copy form to the Designated Information Person.
- Where the client chooses **not to report the offence to An Garda Síochána**, or at least, **not yet**, and has indicated this choice clearly on a signed form, no further action is required.
- Where the client has indicated on the form that **she/he has reported it to An Garda Síochána already**, dated and signed the form clearly, no further action is required. However, it is important that the appropriate section of the form is filled in to include as many details as possible of where, when and to whom the offence was reported. **No details should be given about the offence(s) themselves.**
- Where the client indicates their intention to report the offence to An Garda Síochána themselves, and dates and signs the form clearly to this effect, no further action is required, unless and until the client indicates later on that she/he has changed his/her mind about this. **Any change in a decision by the client to report or not report to An Garda Síochána at any time must be recorded on the relevant form in the presence of the RCC staff member or volunteer, dated and signed.**
 - ◆ When a staff member accompanies the client to have his/her statement taken by An Garda Síochána, **she/he must record this on the form and sign and date it his/herself.**
- When the client tells you that a offence was committed against her/him, but does not have the capacity to decide whether to report or not, **as defined by the legislation (see Definition Section above), you have a duty to decide whether the information comes within the scope of the legislation (see Definition Section for a guide to that).**

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- **If you decide that it does not come within the scope of the legislation, or you are unsure whether it does or not**, you need to discuss the matter with the Designated Information Person, act as directed or advised, and then to record your decision and the basis for it on the form;
- **If you decide that it does come within the scope of the legislation, you must inform the Designated Information Person “as soon as practicable” so that she/he can report it to An Garda Síochána.**
 - ◆ The Garda Reporting Form need to be completed and passed to the Designated Information Person **without delay** for onward transmission to An Garda Síochána.

7.4 Information to assist all staff members and volunteers in fulfilling their responsibilities

- **When the victim or suspected victim is under the age of 14**

Although Rape Crisis Centres do not see children under the age of 14 as counselling clients, RCC staff and volunteers may receive a report of an offence against a child under 14 from someone else who is a client.

It is presumed that a child under the age of 14 does not have the capacity to decide whether to report or not. However, if it can be shown that a particular child **does in fact possess the capacity to make this decision**, that child can be treated for withholding information purposes just like one **over 14**. If the child is **not** shown to have this capacity, however, then:

- ◆ Do not promise to keep the disclosure completely confidential, as it may have to be disclosed under Children First in any event.
- ◆ Designated professional views count-
 - ◇ Regardless of the relationship between the victim or alleged victim and perpetrator or alleged perpetrator, if a member of a “designated profession” who has provided or is providing services to that child, indicates her/his view to the third party or parent, that the offence should not be disclosed to An Garda Síochána, and that view is relied on it is a defence against having to report.
- ◆ Parent or guardian views count –
 - ◇ If the parent or guardian is **not** the perpetrator or alleged perpetrator and the parent or guardian has the opinion that the offence should not be reported to An Garda Síochána and has told someone else such as a counsellor, the report does not have to be made because there is a defence to the requirement to report.

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- ◇ The parent or guardian themselves have a defence if they form the view that it is not appropriate to report on reasonable grounds and in so doing, acted in good faith and in the best interests of that child.
 - ◆ **If the perpetrator or alleged perpetrator is a family member, parent views do not count.**
 - ◆ If a report is received about an offence against a child under 14, it may occasionally be necessary to make a report to An Garda Síochána about that offence if **in the judgement of both the RCC staff member/volunteer and the Designated Information Person**, the child does not have the capacity to make a decision to report her/himself, **and** parental and designated profession defences (as listed above) do not apply.
 - ◆ Explain and ensure that the child understands what will happen next.
 - ◆ Ensure that this information is restricted to those who need to know it.
- **When the victim or suspected victim is over the age of 14 and under the age of 18**

Please refer to the Best Practice Standard for Working with Teenagers, the Consent for Working with Teenagers Form and the Client Consent Form

When a child in this age group discloses that an offence has been committed against her/him and also shares information that would help arrest, prosecute and convict the person(s) responsible:

- ◆ Do not promise to keep the disclosure confidential, as it may have to be disclosed under Children First .
- ◆ If she/he does not want the offence to be reported to An Garda Síochána, neither she/he nor you will have an obligation to report it, but if they do, you will support them to do so.
- ◆ If she/he is unsure now whether she/he wants to report to An Garda Síochána, either you or another staff member, as well as An Garda Síochána, will provide information and support, including advice where necessary, to help with that decision.
- ◆ The decision will be recorded on the appropriate form, and that if they are not Gillick competent, that their parent, guardian or HSE social worker will need to sign and date the form on their behalf.
- ◆ If a RCC staff member or volunteer accompanies him/her to make a formal statement taken by An Garda Síochána, that needs to be recorded on the form.

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- ◆ Explain and ensure that the child understands what will happen next, whatever their decision.
- ◆ Ensure that this information is restricted to those who need to know it.
- **When the victim or suspected victim is or may be a Vulnerable Person within the meaning of the legislation**
 - ◆ The legislation **presumes** that **some** vulnerable persons do not have the ability to decide whether to report or not.
 - ◆ If a particular vulnerable person does **have the capacity to decide whether to report or not**, this presumption will not apply.
 - ◇ If this is the case you can proceed exactly as you would with any other adult.
 - ◆ **If she/he is in fact not able to decide whether to report, in the judgment of both the Rape Crisis staff member/volunteer and the Designated Information Person, then follow the guidelines for persons under the age of 14.**
- **When an adult client discloses historic offence(s) and also information which would help to arrest, prosecute and convict the person responsible for that offence/those offences:**
 - ◆ Ensure that the adult understands that she/he does not have to report this offence to An Garda Síochána if she/he does not want to.
 - ◆ The client's decision needs to be recorded on the appropriate form and signed by the client.
 - ◆ If she/he has already reported the offence to An Garda Síochána, record brief details of to whom, when and where she/he reported it, and ask the client to sign the appropriate form.
 - ◆ Ensure that the client understands that if she/he is unsure whether to report or not, both An Garda Síochána and the Centre can provide information, support and advice to help with that decision.
 - ◆ If she/he, having originally decided not to report and then later changed their mind, that decision needs to be recorded on the appropriate form and signed by the client.
 - ◆ If she/he tells you that they do want to report the offence, explain that Rape Crisis support is available to them to do that.

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- ◆ Ensure that this information is restricted to those who need to know it.
- **When an adult discloses knowledge or belief that an offence has been committed against a child and/or vulnerable person and also information that might be useful in order to arrest, prosecute or convict the person who committed that offence:**
- Do not promise to keep the disclosure completely confidential, as it may have to be disclosed to the HSE under Children First, if it involves a child and there is a current risk to other children.
- Try to find out if the adult knows whether the offence has already been reported.
- Record brief details of what happened, to whom, when, where and by whom, whether it is described as already reported on the appropriate form and ask the adult to sign it.
- In situations like this one where neither victim nor his/her wishes are known to the RCC, you should **make a report to An Garda Síochána “as soon as reasonably practicable”** and leave it to them to ascertain whether that victim is willing to make a formal statement.
- Explain and ensure that the adult giving you the information understands what will happen next.
- Ensure that this information is restricted to those who need to know it.

8. Education, Outreach and Training Programmes

When our RCC provides or facilitates a training, education or outreach program in a second level institution, a third level institution or any youth institution or group when children are likely to be present we will:

- Ascertain who is the leader, or other designated withholding of information person for the institution or group, prior to any agreement to provide or facilitate services. All of our concerns and reporting will go through this leader or designated information person.
- Explain to all participants the limitations of confidentiality as a requirement of the Withholding of Information legislation.

8.1 **When a child over 14 and under 18 in this age group discloses that an offence has been committed against him/her and also information that would help arrest, prosecute and convict the person(s) responsible:**

- Do not promise to keep the disclosure completely confidential, as it may have to be

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disclosed to the HSE under Children First.

- If she/he does not want the offence to be reported to An Garda Síochána, neither she/he nor our RCC will have an obligation to report it, but if they do, the RCC will support them to do so.
- If she/he is unsure now whether she/he wants to report to An Garda Síochána, RCC staff or volunteers, as well as An Garda Síochána, will provide information and support, including advice where necessary, to help with that decision.
- The decision needs to be recorded on the appropriate form, and that if they are not Gillick competent, that their parent, guardian or HSE social worker should sign and date the form on their behalf.
- If a RCC staff member or volunteer accompanies him/her to have a formal statement taken by An Garda Síochána, that also needs to be recorded on the form.
- Explain and ensure that the child understands what will happen next, whatever their decision.
- Ensure that this information is restricted to those who need to know it.

9. PUBLIC AWARENESS EVENTS

When our RCC engages in any public awareness events:

9.1 A child over 14 and under 18 attending the event discloses knowledge or belief that a offence has been committed against him/herself and also information which would help arrest, prosecute and convict the person responsible.

- Do not promise to keep the disclosure completely confidential, as it may have to be disclosed to the HSE under Children First.
- If she/he does not want the offence to be reported to An Garda Síochána, neither she/he nor our RCC will have an obligation to report it, but if they do, the RCC will support them to do so.
- If she/he is unsure now whether she/he wants to report to An Garda Síochána, RCC staff or volunteers, as well as An Garda Síochána, will provide information and support, including advice where necessary, to help with that decision.
- The decision needs to be recorded on the appropriate form, and that if they are not Gillick competent, that their parent, guardian or HSE social worker should sign and date the form on their behalf.
- If a RCC staff member or volunteer accompanies him/her to have a formal statement taken by An Garda Síochána, that also needs to be recorded on the form.

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- Explain and ensure that the child understands what will happen next.
- Ensure the information is restricted to those who need to know it.

9.2 An adult discloses a historic offence or offences which she/he suffered as a child and also information which would help to arrest, prosecute and convict the person responsible for that offence/those offences:

- Explain and ensure that the adult understands that she/he does not have to report this offence to An Garda Síochána if she/he does not want to.
- The RCC needs to record this decision in writing on the appropriate form and ask them to sign it;
- If she/he has already reported the offence to An Garda Síochána, the RCC need shim/her to sign the form to that effect;
- If she/he is unsure whether to report or not, both An Garda Síochána and the Centre can provide information, support and advice to help with that decision;
- If she/he, having originally decided not to report and then later changed their mind, that decision also needs to be recorded on the appropriate form.
- If she/he tells you that they do want to report the offence, explain that Rape Crisis support, advice and information is available to them.
- Explain and ensure that the adult understands what will happen next.
- Ensure that this information is restricted to those who need to know it.

9.3 An adult or child attending the event discloses knowledge or belief that an offence has been committed against a child or vulnerable person, and also information which would help arrest, prosecute and convict the person who committed that offence, we will.

- Not promise to keep the disclosure completely confidential, as it may have to be disclosed to the HSE under Children First, if it involves a child and there is a current risk to other children.
- Try to find out if the adult knows whether the offence has already been reported.
- Record on the appropriate for brief details of what happened, to whom, when, where and by whom, whether it is described as already reported, and ask the adult or child to sign the form.
- When neither victim nor his/her wishes are known to you, **make a report to An Garda Síochána “as soon as reasonably practicable”** and leave it to them to ascertain

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whether that victim is willing to make a formal statement.

- Explain and ensure that the adult or child giving the information understands what will happen next.
- Ensure that this information is restricted to those who need to know it.

10. ALLEGATIONS OF OFFENCES COMMITTED AGAINST CHILDREN OR VULNERABLE PERSONS BY STAFF MEMBERS AND VOLUNTEERS

- The Centre Manager and the Designated Information Person (unless the allegation is being made against them) will be informed as soon as possible.
- If the allegation is being made against the Centre Manager, the Chairperson of the Board of Management will be informed as soon as possible.

Signed

Date

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LIST OF WITHHOLDING OF INFORMATION FORMS THAT ACCOMPANY THIS STANDARD:

A1-Children under the age of 14

A2-Children under the age of 14 with the capacity to make a decision about reporting

A3-Children under the age of 14 who do not or may not have the capacity to make a decision about reporting

B – Teenagers over the age of 14 and under the age of 18

C1-Vulnerable Persons

C2-Vulnerable Persons with the capacity to make a decision about reporting

C3-Vulnerable Persons who do not or may not have the capacity to make a decision about reporting

D1-Adults disclosing historic offences against themselves as children

D2-Adults reporting offences against others

E- Garda Reporting Form

F-Change of Mind about reporting

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APPENDIX

Quick Reference Guide to important provisions of the Bill for easy reference:

- **Definitions:** Sections 1 and 4(15)
- **Offences and some general defences:** Sections 2 and 3
- **Defences of a specific nature:** Section 4
 - ◆ **Defences specific to counsellors and other providing services:** Sections 4(12), (13), (14)
- **Definitions and procedures in relation to “prescribed organisations”:** Section 5
- **Definitions and procedures in relation to “prescribed persons”:** Section 6
- **Definitions and procedures in relation to penalties:** Section 7

Link to latest published version of the Act:

<http://www.oireachtas.ie/documents/bills28/bills/2012/3212/b32b12s.pdf>

Offences under the Act:

Schedule 1: Offences against Children (paraphrased)

Murder and Manslaughter

False Imprisonment

Rape (all kinds)

Sexual Assault and Aggravated sexual assault

Incest

Defilement (i.e. “statutory rape” but also buggery, **all** rape and aggravated sexual assault involving an under-age victim)

Soliciting a person to commit certain sexual offences against them, under Section 6(1) of the Criminal Law (Sexual Offences) Act 1993

Offences under both sections 3 and 4 of the Child Trafficking and Pornography Act 1998

Most offences under the Criminal Law (Human Trafficking) Act 2008, ie offences under sections 2 (trafficking of children), section 5 as far as it concerns soliciting or importuning for purposes of prostitution of a traf-

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ficked child, section 7 and section 3 as far as they concern the sexual exploitation of children, but sections 2A and 2B of the 1998 Act are not included;

Children Act 2001 offences, namely: cruelty to children (s 246) and causing or encouraging sexual offence upon a child (S 249);

Reckless endangerment of children (Criminal Justice Act 2006 section 176);

Most offences under the Criminal Justice (Female Genital Mutilation) Act 2012; and

The following offences under the Non-Fatal Offences against the Person Act 1997:

Assault causing harm;

Assault causing serious harm;

Threats to kill or cause serious harm;

Endangerment and false imprisonment;

Abduction of child by parent or abduction by other person and

Sexual offences committed outside State which would be capable of being prosecuted in this country according to the Sexual Offences (Jurisdiction) Act 1996.

Schedule 2

Offences against Vulnerable Persons covered by the Act (paraphrased)

1. Rape(any kind)
2. False imprisonment
3. Sexual assault or aggravated sexual assault
4. Incest
5. Sexual offences under section 5 of the Criminal Justice (Sexual Offences) Act 1993, against “mentally impaired” persons
6. Sexual offences committed outside State which would be capable of being prosecuted in this country; and

Any offences under any of the following provisions of the Criminal Law (Human Trafficking) Act 2008 – namely:

Section 4 (trafficking of persons other than children);

Section 5 insofar as it relates to someone against whom a section 4(1) or (3) has been committed (soliciting or importuning for purposes of prostitution of trafficked persons)

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