



AN BILLE UM CHEARTAS COIRIÚIL, 1993
CRIMINAL JUSTICE BILL, 1993

*Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann*

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
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6. Compensation order.
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ACTS REFERRED TO

Children Act, 1908	1908, c. 67
Civil Liability Act, 1961	1961, No. 41
Criminal Damage Act, 1991	1991, No. 31
Criminal Evidence Act, 1992	1992, No. 12
Criminal Justice (Legal Aid) Act, 1962	1962, No. 12
Criminal Procedure Act, 1967	1967, No. 12
Enforcement of Court Orders Act, 1940	1940, No. 24
Family Law (Maintenance of Spouses and Children) Act, 1976	1976, No. 11

[No. 6a of 1993]

Lunacy (Ireland) Act, 1821	1821, c. 33
Probation of Offenders Act, 1907	1907, c. 30
Prosecution of Offences Act, 1974	1974, No. 22
Punishment of Incest Act, 1908	1908, c. 45
Road Traffic Act, 1961	1961, No. 24
Trial of Lunatics Act, 1883	1883, c. 38



AN BILLE UM CHEARTAS COIRIÚIL, 1993
CRIMINAL JUSTICE BILL, 1993

BILL

entitled

5 AN ACT TO ENABLE THE COURT OF CRIMINAL APPEAL
TO REVIEW UNDULY LENIENT SENTENCES, TO MAKE
OTHER PROVISION IN RELATION TO SENTENCING,
TO PROVIDE FOR THE PAYMENT BY OFFENDERS OF
10 COMPENSATION FOR INJURY OR LOSS RESULTING
FROM THEIR OFFENCES, TO AMEND THE CRIMINAL
PROCEDURE ACT, 1967, AND THE PUNISHMENT OF
INCEST ACT, 1908, AND TO PROVIDE FOR CONNECTED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15 1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“compensation order” and “injured party” have the meanings assigned to them by *section 6*;

“imprisonment” includes detention in Saint Patrick’s Institution;

20 “sentence” includes a sentence of imprisonment and any other order made by a court in dealing with a convicted person other than—

(a) an order under section 17 of the Lunacy (Ireland) Act, 1821, or section 2 (2) of the Trial of Lunatics Act, 1883, or

25 (b) an order postponing sentence for the purpose of obtaining a medical or psychiatric report or a report by a probation officer;

“sentencing court” means the court referred to in *section 2 (1)*.

(2) References in *sections 2 (1)* and *4 (1)* to conviction of a person on indictment include references to conviction of a person after signing a plea of guilty and being sent forward for sentence under
30 *section 13 (2) (b)* of the Criminal Procedure Act, 1967.

(3) This Act shall not apply to sentences imposed on persons convicted before its commencement.

(4) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended, and

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended. 5

Review of certain sentences.

2.—(1) If it appears to the Director of Public Prosecutions that a sentence imposed by a court (in this Act referred to as the “sentencing court”) on conviction of a person on indictment was unduly lenient, he may apply to the Court of Criminal Appeal to review the sentence. 10

(2) An application under this section shall be made, on notice given to the convicted person, within 28 days from the day on which the sentence was imposed. 15

(3) On such an application, the Court may either—

(a) quash the sentence and in place of it impose on the convicted person such sentence as it considers appropriate, being a sentence which could have been imposed on him by the sentencing court concerned, or 20

(b) refuse the application.

(4) Section 6 of the Prosecution of Offences Act, 1974 (which prohibits certain communications in relation to criminal proceedings), shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this section as it applies to such communications made for the purpose of making a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings. 25

Appeal on point of law to Supreme Court.

3.—(1) An appeal shall lie to the Supreme Court by the convicted person or the Director of Public Prosecutions from the determination of the Court of Criminal Appeal of an application under *section 2* if that Court, the Attorney General or the Director of Public Prosecutions certifies that the determination involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. 30 35

(2) The Supreme Court may, for the purposes of its decision on such an appeal, either—

(a) remit the case to the Court of Criminal Appeal to deal with, or 40

(b) deal with it itself and for that purpose exercise any powers of that Court,

and that Court or the Supreme Court, as may be appropriate, may, if necessary, quash any sentence imposed by the Court of Criminal Appeal and in place of it impose on the convicted person such sentence as it considers appropriate, being a sentence which could have been imposed on him by the sentencing court concerned. 45

Minor and consequential provisions.

4.—(1) The registrar of a court which has imposed a sentence on conviction of a person on indictment shall—

5 (a) give to the Director of Public Prosecutions, on request, a copy of any reports or other relevant documents that were considered by the court before it imposed the sentence, and

(b) if the sentence has become the subject of an application under *section 2*, give a copy of those documents to the Court of Criminal Appeal and the convicted person.

10 (2) Where an application has been made to the Court of Criminal Appeal under *section 2* or an appeal has been made to the Supreme Court under *section 3*—

15 (a) a legal aid (appeal) certificate or, as the case may be, a legal aid (Supreme Court) certificate shall be deemed, for the purposes of the Criminal Justice (Legal Aid) Act, 1962, to have been granted in respect of the person whose sentence is the subject of the application or appeal, and

20 (b) the person shall be entitled to free legal aid in the preparation and conduct of his case before the Court of Criminal Appeal or the Supreme Court and to have a solicitor and counsel assigned to him for that purpose in the manner prescribed by regulations under *section 10* of that Act.

25 5.—(1) In determining the sentence to be imposed 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. Effect of certain offences on persons in respect of whom committed.

(2) This section applies to—

30 (a) a sexual offence within the meaning of the Criminal Evidence Act, 1992,

(b) an offence involving violence or the threat of violence to a person, and

35 (c) 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)* or *(b)*.

40 (3) Where a court is determining the sentence to be imposed on a person for an offence to which this section applies, the 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 upon being requested to do so.

45 6.—(1) Subject to the provisions of this section, on conviction of any person of an offence, the court, instead of or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act referred to as a “compensation order”) requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the “injured party”) who has suffered such injury or loss. Compensation order.

55 (2) The compensation payable under a compensation order (including a compensation order made against a parent or guardian of the convicted person and notwithstanding, in such a case, any other statutory limitation as to amount) shall be of such amount (not

exceeding, in the case of such an order made by the District Court, such amount as may stand prescribed for the time being by law as the limit of that Court's jurisdiction in tort) as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the convicted person, the injured party or the prosecutor, and shall not exceed the amount of the damages that, in the opinion of the court, the injured party would be entitled to recover in a civil action against the convicted person in respect of the injury or loss concerned. 5

(3) Where the commission of the offence by the convicted person involved the taking of property out of the possession of the injured party and the property has been recovered, any loss occurring to the injured party by reason of the property being damaged while out of his possession shall be treated for the purposes of *subsection (1)* as having resulted from the offence, irrespective of how the damage was caused or who caused it. 10 15

(4) A compensation order shall not be made in respect of an injury or loss that results from the use of a mechanically propelled vehicle (within the meaning of the Road Traffic Act, 1961) in a public place unless it appears to the court that— 20

(a) it is in respect of an injury or loss as respects which the use of the vehicle by the convicted person was in breach of section 56 (which provides for the compulsory insurance of mechanically propelled vehicles) of that Act, or

(b) it is in respect of a loss which is treated by *subsection (3)* as having resulted from the offence, 25

and, where a compensation order is made in respect of injury or loss resulting from such use, the amount of the compensation may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance resulting from such use. 30

(5) In determining whether to make a compensation order against a person, and in determining the amount of the compensation, the court shall have regard—

(a) to his means, or

(b) in a case to which section 99 of the Children Act, 1908 (which empowers a court to require a parent or guardian to pay any fine, damages or costs imposed on or awarded against a child or young person), applies, to the means of the parent or guardian, 35

so far as they appear or are known to the court and for that purpose the court may require the convicted person or his parent or guardian, as the case may be, to give evidence as to his means and financial commitments. 40

(6) A compensation order may provide for payment of the compensation by such instalments and at such times as the court shall in all the circumstances consider reasonable. 45

(7) Where the court considers—

(a) that it would be appropriate both to impose a fine and to make a compensation order, but

(b) that the convicted person has insufficient means to pay both an appropriate fine and appropriate compensation, 50

the court may, if it is satisfied that the means are sufficient to justify its doing so, make a compensation order and, if it is satisfied that it is appropriate to do so having regard to the means that would remain after compliance with the order, impose a fine.

5 (8) At any time after a compensation order has ceased to be suspended by virtue of *section 8* and before it has been complied with or fully complied with, the District Court (or, where the amount payable under the order exceeds such amount as may stand prescribed for the time being by law as the limit of that Court's jurisdiction in
10 tort, the court which made the order) may—

(a) on the application of the convicted person concerned and on being satisfied that the injured party concerned has been given an opportunity of making representations to the Court on the issue and having regard to any such representations that are made by him or on his behalf, reduce
15 the amount remaining to be paid, vary any instalment payable, or direct that no payments or further payments be made, under the order if it appears to the Court that, because of a substantial reduction in the means of the convicted person, his means are insufficient to satisfy the order in full, or

(b) on the application of the injured party concerned and on being satisfied that the convicted person concerned has been given an opportunity of making representations to the Court on the issue and having regard to any such representations that are made by him or on his behalf, increase the amount to be paid, the amount of any instalment or the number of instalments payable, under the order if it appears to the Court that—

30 (i) because of a substantial increase in the means of the convicted person, his means are sufficient for the relevant purposes aforesaid, and

(ii) any increased amount to be paid under the order would not exceed—

35 (I) the amount of the damages that the injured party concerned would be entitled to recover in a civil action against the convicted person in respect of the injury or loss concerned, or

40 (II) such amount as may stand prescribed for the time being by law as the limit of the Court's jurisdiction in tort,

whichever is the lesser.

45 (9) The references to damages in the aforesaid section 99 shall be construed as if they included references to compensation under a compensation order and subsections (5) and (6) of that section shall not apply in relation to a compensation order.

(10) This section is without prejudice to any other enactment which provides for the payment of compensation by a person convicted of an offence or otherwise proved to have committed an offence.

50 (11) The making of a compensation order against a parent or guardian of a convicted person shall not of itself give rise to any other liability on the part of the parent or guardian in respect of the injury or loss.

(12) In this section—

(a) in a case where death has resulted from an offence specified in *subsection (1)*—

“loss” means any matter (including mental distress resulting from the death and funeral expenses) for which damages could be awarded in respect of the death by virtue of Part V of the Civil Liability Act, 1961, 5

“injured party” includes a dependant (within the meaning of the said Part V) of the deceased person concerned,

(b) references to conviction of a person include references to dealing with a person under section 1 (1) of the Probation of Offenders Act, 1907, and 10

(c) the third reference in *subsection (1)*, the second reference in *subsection (2)* and the references in *subsections (7) (b)* and *(8)* (other than *paragraph (b) (ii)*) to a convicted person, however expressed, include, in a case to which the aforesaid section 99 applies, references to his parent or guardian. 15

(13) In assessing for the purposes of this section the means of a person, the court shall take into account his financial commitments. 20

Payment of compensation to District Court clerks for transmission, and attachment of earnings orders.

7.—(1) Subject to *subsection (2)*, payments under a compensation order or an order under *section 6 (8)* shall be made, for transmission to the injured party concerned, to such District Court clerk as may be determined from time to time by the court which made the order.

(2) For the purposes of *subsection (1)* and of securing compliance with compensation orders and orders under *section 6 (8)*— 25

(a) *subsections (2), (4), (5) and (6)* of section 9 (which relates to the transmission of maintenance order payments through District Court clerks),

(b) Part III (which relates to attachment of earnings), and 30

(c) section 29 (which amends the Enforcement of Court Orders Act, 1940) of the Family Law (Maintenance of Spouses and Children) Act, 1976,

shall apply to those orders with the following modifications and any other necessary modifications, that is to say: 35

(i) in the said *subsections (2) and (4)*—

(I) the references to payments shall be construed as including payments under a compensation order or an order under *section 6 (8)* to a District Court clerk pursuant to *subsection (1)*, and 40

(II) the references to the maintenance creditor shall be construed as references to the injured party,

(ii) in the said Part III—

(I) in section 10—

(A) subparagraphs (i) and (ii) of *subsection (1) (a)* shall not apply, 45

- (B) the reference to the District Court in subsection (1) (a) (iii) (I) shall be construed as a reference to a court, and
- 5 (C) in subsection (2), paragraph (a) shall be deleted and the following paragraph shall be substituted for paragraph (b):
 - 10 “(b) in any other case, to the District Court clerk specified by the attachment of earnings order for transmission to the injured party concerned”,
 - (II) the references to an antecedent order shall be construed as references to a compensation order and an order under *section 6 (8)*,
 - 15 (III) the references to the maintenance creditor shall be construed as references to the injured party, and
 - (IV) the references to the maintenance debtor shall be construed as references to the convicted person or, in a case to which section 99 of the Children Act, 1908, applies, to his parent or guardian,
 - 20 and
 - (iii) in the said section 29 the reference to a maintenance order shall be construed as including a reference to a compensation order and an order under *section 6 (8)*.
 - 25

8.—(1) The operation of a compensation order shall be suspended—

Suspension of compensation order pending appeal.

- 30 (a) in any case, until the ordinary time for giving notice of an appeal or of an application for leave to appeal (whether against the conviction to which the order relates or the sentence) has expired, and
- 35 (b) in a case where the notice aforesaid is given within that time or such extended time as the court to which the appeal is brought may allow, until the appeal or any further appeal therefrom is finally determined or abandoned or the ordinary time for instituting any further appeal has expired.

(2) Where the operation of a compensation order is suspended under *subsection (1) (b)*, the order shall not take effect if the conviction concerned is reversed on appeal.

40 (3) A court hearing an appeal against conviction or sentence may annul or vary the compensation order concerned.

45 (4) A person against whom a compensation order is made may appeal against the order to the court to which an appeal against the conviction concerned may be brought and *subsections (1) (b) and (3)* shall apply in relation to an appeal under this subsection as they apply, or would apply, to an appeal against the conviction.

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(5) Where a compensation order has been made against a person in respect of an offence taken into consideration in determining his sentence, the order shall cease to have effect if he successfully appeals against his conviction of the offence, or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made. 5

(6) In this section references to conviction of a person include references to dealing with a person under section 1 (1) of the Probation of Offenders Act, 1907.

Effect of
compensation
order on civil
proceedings.

9.—Where— 10

(a) a compensation order has been made in favour of a person,
and

(b) damages in respect of the injury or loss concerned fall to be assessed in civil proceedings,

then— 15

(i) if the damages, as so assessed, exceed any amount paid under the compensation order, the damages awarded shall not exceed the amount of that excess,
and

(ii) if any amount paid under the compensation order exceeds the damages, as so assessed, the court may order that the amount of the excess be repaid by that person to the person against whom the compensation order was made, 20

and, upon the award of damages or, as the case may be, the making of the order by the court, the compensation order shall cease to have effect. 25

Service of
documents.

10.—(1) A document required by *section 2* or *4* of this Act to be given to a convicted person may, subject to *subsection (3)*, be so given— 30

(a) by delivering it to him or to his solicitor,

(b) by addressing it to him and leaving it at his usual or last known residence or place of business or by addressing it to his solicitor and leaving it at the solicitor's office,

(c) by sending it by registered post to him at his usual or last known residence or place of business or to his solicitor at the solicitor's office, or 35

(d) in the case of a body corporate, by delivering it, or sending it by registered post, to the secretary or other officer of the body at its registered or principal office. 40

(2) For the purposes of *subsection (1)* the solicitor retained to appear on behalf of the convicted person at his trial shall be deemed to continue to be retained on his behalf unless he is discharged by the Court of Criminal Appeal.

(3) A document required by *section 2* or *4* of this Act to be given to a convicted person shall be given personally to him if he was not represented by a solicitor at his trial or if his solicitor has been so discharged. 45

11.—The Criminal Procedure Act, 1967, shall, in relation to a person who gives evidence through a live television link at the preliminary examination of an offence to which section 5 of this Act applies, have effect with the following modifications:

Amendment of
Criminal
Procedure Act,
1967.

5 (a) in section 7—

(i) in subsection (1) (which deals with the matters to be considered by the district judge conducting such an examination), “, any evidence given through a live television link” shall be inserted after “section”, and

10 (ii) subsection (2) (which deals with the giving of evidence at such an examination by sworn deposition) shall not apply in relation to him,

15 (b) an order may be made under section 9 (which deals with witness orders) requiring him to attend and give evidence before the court to which the accused person concerned has been sent forward for trial and to produce any document or thing specified in the order.

12.—Section 1 (incest by males) of the Punishment of Incest Act, 1908, is hereby amended by the substitution for “liable, at the discretion of the court, to be kept in penal servitude for any term not less than three years, and not exceeding seven years, or to be imprisoned for any time not exceeding two years with or without hard labour” of “liable to imprisonment for a term not exceeding 20 years”.

Amendment of
Punishment of
Incest Act, 1908.

13.—Sections 9, 10 and 11 of the Criminal Damage Act, 1991, are hereby repealed.

Repeals.

14.—(1) This Act may be cited as the Criminal Justice Act, 1993.

Short title and
commencement.

(2) This Act shall come into operation one month after the date of its passing.

BILLE

dá ngairtear

Acht dá chumasú don Chúirt Achomhairc Choiriúil athbhreithniú a dhéanamh ar phianbhreitheanna ró-thrócaireacha, do dhéanamh forála eile i ndáil le pianbhreitheanna a ghearradh, do dhéanamh socrú maidir le ciontóirí d'íoc cúitimh i ndíobháil nó i gcaillteanas de dheasca a gcionta, do leasú an Achta um Nós Imeachta Coiriúil, 1967, agus an *Punishment of Incest Act*, 1908, agus do dhéanamh socrú le haghaidh nithe comhghaolmhara.

An tAire Dlí agus Cirt a thólaic

*Ritheadh ag Dáil Éireann,
11 Márta, 1993*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath 2, nó trí aon díoltóir leabhar.

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entitled

An Act to enable the Court of Criminal Appeal to review unduly lenient sentences, to make other provision in relation to sentencing, to provide for the payment by offenders of compensation for injury or loss resulting from their offences, to amend the Criminal Procedure Act, 1967, and the Punishment of Incest Act, 1908, and to provide for connected matters.

Presented by the Minister for Justice

*Passed by Dáil Éireann,
11th March, 1993*

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