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**AN BILLE UM AN DLÍ COIRIÚIL (INGHLACTHACHT  
FIANAISE) 2008**  
**CRIMINAL LAW (ADMISSIBILITY OF EVIDENCE) BILL  
2008**

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*Mar a tionscnaíodh*  
*As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. Short Title and Commencement.
  2. Interpretation.
  3. Abolition of Exclusionary Rule of Evidence.
  4. Admissibility of Illegally Obtained Evidence.
  5. Determination of Admissibility.
  6. Referral of Matter to Garda Síochána Ombudsman Commission.
  7. Transitional Provision.
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ACTS REFERRED TO

Defence Acts 1954 to 2007  
Garda Síochána Act 2005

2005, No. 20



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CRIMINAL LAW (ADMISSIBILITY OF EVIDENCE) BILL  
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**BILL**

*entitled*

AN ACT TO REVISE IN PART THE LAW OF EVIDENCE IN  
CRIMINAL PROCEEDINGS AND FOR THAT PURPOSE  
TO ABOLISH THE EXCLUSIONARY RULE AND TO  
10 AMEND THE GARDA SÍOCHÁNA ACT 2005.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—This Act may be cited as the Criminal Law (Admissibility of  
Evidence) Act 2008. Short Title and  
Commencement.

2.—In this Act— Interpretation.

15 “Court” includes court-martial within the meaning of the Defence  
Acts 1954 to 2007;

“criminal proceedings” includes proceedings before a court-martial  
and proceedings on appeal;

20 “improperly or illegally obtained evidence” means evidence obtained  
by the Garda Síochána or other law enforcement agency in a manner  
which breaches an accused’s rights which exist under or derive  
from—

(a) common law,

(b) statutory criminal law, or

25 (c) the Constitution;

“law enforcement agency” means any State body which has been  
conferred with powers in respect of the detection or investigation of  
any offence.

3.—The exclusionary rule of evidence whereby improperly or  
30 illegally obtained evidence, which may amount to a breach of the  
constitutional rights of the accused, is automatically excluded from  
criminal proceedings, is hereby abolished. Abolition of  
Exclusionary Rule  
of Evidence.

Admissibility of  
Illegally Obtained  
Evidence.

4.—In determining the admissibility of improperly or illegally obtained evidence in criminal proceedings the court shall make such determination by a balancing of the interests of:

- (a) the rights of the accused;
- (b) the constitutional rights of the victim of crime including the right to life, bodily integrity and property; 5
- (c) the public interest in the prosecution of a crime; and
- (d) public confidence in the administration of justice.

Determination of  
Admissibility.

5.—In making a determination under *section 4*, a court shall have regard to all of the circumstances in which the evidence was obtained and is sought to be admitted, including: 10

- (a) whether the obtaining of the evidence was a result of a mere mistake, accident or oversight as opposed to a deliberate and conscious violation of a constitutional right; 15
- (b) whether the breach was serious or merely technical in nature;
- (c) the seriousness of the crime which the accused is alleged to have committed;
- (d) whether there are extraordinary excusing circumstances which justify the admission of the evidence; and 20
- (e) the effect on the administration of justice of including or excluding the evidence.

Referral of Matter  
to Garda Síochána  
Ombudsman  
Commission.

6.—(1) Where evidence in a case is found to have been improperly or illegally obtained by a member of An Garda Síochána, the court may, where it deems it appropriate to do so, refer any such matter to the Garda Síochána Ombudsman Commission for investigation. 25

(2) The Garda Síochána Act 2005 is amended in section 67(2) by inserting a new paragraph (*aa*) as follows: 30

“(aa) to receive and investigate matters referred pursuant to *section 6(1)* of the *Criminal Law (Admissibility of Evidence) Act 2008*.”.

(3) The Garda Síochána Act 2005 is amended in Part 4 by inserting a new section as follows: 35

“Referral of  
Matters by  
Courts.

82A.—Matters which have been found by a court to involve evidence which had been improperly or illegally obtained and which have been referred to the Ombudsman Commission pursuant to 6(1) of the Criminal Law (Admissibility of Evidence) Act 2008 shall be investigated under section 98.”. 40

7.—Nothing in this Act shall be construed as prejudicing or affecting:  
Transitional Provision.

(a) the previous operation of the exclusionary rule of law so abolished;

5 (b) any proceedings pending at the time of such abolition.