



SEANAD ÉIREANN

**AN BILLE UM NÓS IMEACHTA COIRIÚIL 2009
CRIMINAL PROCEDURE BILL 2009**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM NÓS IMEACHTA COIRIÚIL 2009 —AN COISTE

CRIMINAL PROCEDURE BILL 2009 —COMMITTEE STAGE

Leasuithe Amendments

** Government amendments are
denoted by an asterisk.*

SECTION 2

* 1. In page 6, between lines 2 and 3, to insert the following:

“ “Act of 1967” means the Criminal Procedure Act 1967;”.

SECTION 4

2. In page 6, before section 4, but in Part 1, to insert the following new section:

“PART 2*

TREATMENT OF VICTIMS

Treatment of
victims.

4.—(1) Any person who deals with a victim (for example, a member of the judiciary, lawyer, member of court staff, member of an Garda Síochána or other official) shall—

- (a) treat the victim with courtesy and compassion, and
- (b) respect the victim’s dignity and privacy, save that nothing contained herein shall in any way infringe the constitutional rights of an alleged offender or of an offender.

(2) A victim has the right to be informed as fully as possible—

- (a) of his or her rights and of the remedies available to the victim,
- (b) of his or her role in the criminal justice process and with regard to criminal proceedings and of the progress made in investigating his or her complaint and in the processing of any criminal prosecution arising from such complaint,
- (c) of the availability of health services and social services or other appropriate assistance or prevention services through which he or she may obtain such medical, psychological, social care or help as he or she may require.

(3) A victim has the right, insofar as resources are available—

[SECTION 4]

(a) to such medical, psychological and social care or help as he or she may require and to such other assistance or services capable of meeting his or her needs for shelter and support or for referral to other services better suited to provide him or her with assistance,

(b) to protection against intimidation and retaliation.

(4) A victim has a duty to cooperate, to such extent as is possible, with an Garda Síochána and any other relevant law enforcement authority.”.

—*Senator Eugene Regan.*

[*Note: The proposed new part comprehends the inclusion of amendment No. 3.]

3. In page 6, before section 4, but in Part 1, to insert the following new section:

“Access to services.

5.—A victim or member of a victim’s immediate family who has welfare, counseling, medical or legal needs arising from the commission of an offence or as a result of anti-social behaviour shall have access to services that are responsive to those needs insofar as resources are available.”.

—*Senator Eugene Regan .*

4. In page 6, before section 4, but in Part 1, to insert the following new section:

“PART 3*

INFORMATION TO BE GIVEN TO VICTIMS

Information from State agencies about services and remedies.

6.—(1) A victim shall, as soon as practicable after the victim comes in contact with a State agency, be given information by the personnel of the agency about services or remedies available to the victim by such agency and by any other State agency and by any local accessible voluntary agency.

(2) In this section, “State agency” means—

(a) an Garda Síochána,

(b) the Courts Service Board,

(c) the Criminal Injuries Compensation Tribunal,

(d) Department of Health and Children,

(e) Department of Justice, Equality and Law Reform,

(f) the Health Service Executive.

(3) Nothing in this section prevents information required to be given under this section from being given otherwise than is required under this section.”.

—*Senator Eugene Regan.*

[*Note: The proposed new Part comprehends the inclusion of amendment Nos. 5, 6, 7 and 8.]

5. In page 6, before section 4, but in Part 1, to insert the following new section:

[SECTION 4]

“Information about investigation and court proceedings.

7.—(1) A victim shall as soon as practicable, be given information by an Garda Síochána or, as the case requires, by the Courts Service Board or the Director of Public Prosecutions about the following matters:

- (a) the name of the member of an Garda Síochána who has the primary responsibility to investigate the reported offence and/or anti-social behaviour and relevant Garda station;
- (b) the telephone number where the Garda referred to in *paragraph (a)* may be contacted for information relating to the investigation or resulting prosecution;
- (c) an outline of the investigation and prosecution process;
- (d) the progress of the investigation of the offence;
- (e) the charges (if any) laid together with an explanation of the nature of the charges or any final decision made not to charge an alleged offender;
- (f) the progress of the prosecution, if any, taken against any alleged offender or alleged offenders and, in particular, the date, time and location of each event listed in *subsection (2)*;
- (g) whether or not the accused or offender is granted bail and the terms and conditions of any bail granted;
- (h) the victim’s role as a witness in the prosecution of the offence;
- (i) the victim’s entitlement to make a Victim Impact Statement and the role of such Statement;
- (j) every final disposition of all proceedings at first instance or on appeal (if any) relating to the offence, to include—
 - (i) any convictions or pleas of guilty entered and sentences imposed, in relation to the offence,
 - (ii) any acquittal or deemed acquittal or finding that the charge was not proved,
 - (iii) any decision of the prosecution to modify or not to proceed with charges laid, including any decision to accept a plea of guilty to a lesser offence than the original offence or offences charged,
 - (iv) any application made to the High Court by way of judicial review in connection with charges laid in relation to the offence, the prosecution brought or the trial resulting from the offence or any resulting conviction or sentence and any resulting court order made;
- (k) where applicable, the courts’ jurisdiction to make orders pursuant to the Domestic Violence Acts 1996 to 2002 and the type of orders that can be made under the said Acts;
- (l) the courts’ jurisdiction to order that information identifying the address of the place where the victim lives or works be not given to an accused or an offender, or in evidence or in information provided to a court;

[SECTION 4]

- (m) where applicable, the circumstances in which a victim may give evidence through a television link or through an intermediary under the Criminal Evidence Act 1992 as amended by the Criminal Law (Sexual Offences) Acts 2006 and 2007 or the Criminal Justice Act 1999;
 - (n) where applicable, the courts' jurisdiction pursuant to section 181 of the Criminal Justice Act 2006 to order that a victim's medical condition be a matter of anonymity should the victim give evidence as a witness;
 - (o) the circumstances in which a compensation order may be made or reparations obtained by a victim pursuant to the Criminal Damage Act 1991, the Criminal Justice Act 1993, the Children Act 2001 or pursuant to any non-statutory scheme established by the State;
 - (p) the circumstances in which a victim's anonymity may be protected pursuant to the Criminal Law Rape Acts 1981 and 1990 as amended by the Criminal Law (Sexual Offences) (Amendment) Act 2007;
 - (q) the jurisdiction of the courts pursuant to section 26 of the Criminal Justice Act 2007 to make a Protection of Person's Order to protect the victim of specified indictable offences or of an alleged such offence or any other person from harassment by an offender or a person charged with such offence by prohibiting the offender or the person so charged from engaging in behaviour that would be likely to cause the victim or other named person fear, distress or harm or would be likely to amount to intimidation;
 - (r) where applicable, the availability of a restorative justice scheme in operation of relevance should an alleged offender be convicted, the objectives of such scheme, the procedure applicable and the opportunity, if any, available to the victim to participate in such scheme;
 - (s) where applicable, in relation to anti-social behaviour, the remedies available pursuant to Parts 11 and 13 of the Criminal Justice Act 2006, the steps intended to be taken, the resolution, if any, achieved and, where required, details of any court application made and of any court orders granted and the role where relevant of the victim.
- (2) The events referred to in *subsection (1)(f)* are:
- (a) the first and any subsequent appearance in court, in connection with the offence, of the person accused of the offence;
 - (b) any preliminary hearing relating to the offence;
 - (c) any defending hearing, or trial relating to the offence;
 - (d) any hearing set down for sentencing for the offence;
 - (e) any hearings of appeal (if any) against conviction of the offence or against the sentence to be imposed or to be imposed for the offence or both;
 - (f) any hearings to review any sentence imposed on the application of the Director of Public Prosecutions where it appears to the Director of Public Prosecutions that a sentence imposed by a court on indictment was unduly lenient.

[SECTION 4]

(3) Nothing in this section prevents information required to be given under this section from being given otherwise than as required under this section.”

—*Senator Eugene Regan.*

6. In page 6, before section 4, but in Part 1, to insert the following new section:

“Limits on duties to give information under sections 6* and 7*.

8.—Nothing in sections 6* or 7* requires any person to give information if good reason for withholding the information exists, such as where the giving of the information would be likely to prejudice the maintenance of law and order, including the prevention, investigation and detection of offences and the right to a fair trial.”

—*Senator Eugene Regan.*

[*Note: This is a reference to the section proposed to be inserted by amendment Nos. 4 and 5.]

7. In page 6, before section 4, but in Part 1, to insert the following new section:

“Information may be given to victim’s support person.

9.—Information required to be given under sections 6* or 7* may be given to a support person of a victim—

(a) cannot receive it, or

(b) is not or may not be capable alone of understanding it.”

—*Senator Eugene Regan.*

[*Note: This is a reference to the section proposed to be inserted by amendment Nos. 4 and 5.]

8. In page 6, before section 4, but in Part 2, to insert the following new section:

“Victim’s views on application for order prohibiting publication of name of accused or offender.

10.—(1) This section applies to a victim of a sexual offence after a person accused of such offence has been convicted of the offence.

(2) No court shall order that the anonymity of the person convicted of a sexual offence shall be protected where a victim to whom this section applies informs the court that it is the victim’s wish that the identity of the offender be publicly disclosed, even where disclosing the identity of the offender may result in the identity of the victim also being publicly disclosed and where the victim confirms to the court an awareness of such risk.”

—*Senator Eugene Regan.*

9. In page 6, line 31, after “person,” to insert the following:

“or any offence under the Non-Fatal Offences against the Person Act 1997”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

10. In page 7, line 14, after “by” to insert “or on behalf of”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

* 11. In page 7, to delete lines 27 to 33 and substitute the following:

“(ii) is—

[SECTION 4]

(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,”.

12. In page 7, line 44, after “on” to insert the following:

“the person between the commission of the offence and the death of the person and on”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

13. In page 8, between lines 20 and 21, to insert the following:

“(5) Where a person in respect of whom an offence has been committed, or a family member of that person, proposes to give evidence under subsection (3) orally rather than in writing, it shall not be necessary for the court to give any particular direction or warning to that person in respect of his or her evidence.”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

* 14. In page 10, to delete lines 1 and 2.

15. In page 10, between lines 7 and 8, to insert the following:

“(7) This section is without prejudice to the power of a court to receive evidence regarding the effect of an offence, other than an offence to which this section applies, on the person in respect of whom the offence was committed.”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 6

16. In page 10, line 44, after “competent” to insert “and suitably trained”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 7

17. In page 10, before section 7, but in Part 2, to insert the following new section:

“Legal representation of victim.

7.—In an application under this section the court may make such order as it sees fit to facilitate legal representation of a person in respect of whom an offence has been committed or a family member as appropriate, where it is appropriate to do so.”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

18. In page 10, before section 7, but in Part 2, to insert the following new section:

[SECTION 7]

“PART 3*

NOTICE OF CERTAIN MATTERS TO BE GIVEN TO VICTIMS OF CERTAIN OFFENCES

Notice of release on bail of accused or offender.

7.—(1) An Garda Síochána shall give a victim to whom this section applies notice, as soon as practicable of—

- (a) every release on bail (if any) of the person accused of the offence or, as the case requires, the offender, and
- (b) any terms or conditions of a release of that kind—
 - (i) that relate to the safety and security of the victim or of one or more members of his or her immediate family or of both, or
 - (ii) that require the accused or offender not to associate or not to contact the victim or one or more members of his or her immediate family, or both.

(2) In this section, release on bail includes a release on bail—

- (a) until the hearing of proceedings,
- (b) during an adjournment of proceedings,
- (c) until sentencing, and
- (d) until determination of an appeal against conviction or sentence.”.

—*Senator Eugene Regan.*

[*Note: The proposed new Part comprehends the inclusion of amendment Nos. 19 to 31.]

19. In page 10, before section 7, but in Part 2, to insert the following new section:

“Notice of offender being considered for parole.

8.—(1) The Secretary General of the Department of Justice, Equality and Law Reform shall give a victim to whom this section applies reasonable prior notice of the intention of the Parole Board or the Minister for Justice, Equality and Law Reform to review the cases of eligible prisoners for parole or for early release, as the case may be, and shall afford such victim a reasonable opportunity to furnish a submission in writing to the Parole Board or the Minister as appropriate for consideration.

(2) Any submission made to the Parole Board pursuant to *subsection (1)* shall, subject to *subsection (4)* of this section, be furnished to the prisoner seeking parole to whom it relates and such prisoner shall be entitled to make such reply in writing to the Parole Board as he or she deems appropriate, within ten days of receipt of such submission.

(3) When informing a victim of the intention of the Parole Board to review the case of an eligible prisoner or prisoners for parole and of the right of the victim to make a submission to the Parole Board in accordance with *subsection (1)*, the victim shall be informed by the Parole Board that any such submission received by it will be furnished to the prisoner or prisoners to whom it relates seeking parole for reply, subject to the exclusion from the submission of information as provided for in *subsection (4)*.

[SECTION 7]

(4) There shall be excluded from any submission furnished to a prisoner under this section any information that identifies or may identify or lead to the identification of the address of the victim.”

—*Senator Eugene Regan.*

20. In page 10, before section 7, but in Part 2, to insert the following new section:

“Notice of release or escape by accused or offender.

9.—(1) The Secretary General of the Department of Justice, Equality and Law Reform shall give a victim to whom this section applies—

- (a) reasonable prior notice of the offender’s impending release from prison or release to or from detention,
 - (b) if a release of that kind is on parole, reasonable prior notice of any terms or conditions of that release—
 - (i) that relate to the safety and security of the victim, or of one or more members of his or her immediate family, or of both, or
 - (ii) that require the offender not to associate with, or not to contact, the victim, or one or more members of his or her immediate family, or both,
- and
- (c) notice, as soon as practicable, of an escape from prison or detention by the person accused of the offence or the offender.

(2) In *subsection (1)(a)*, release from prison includes a temporary or early release from custody and a part-time release to engage in employment.”

—*Senator Eugene Regan.*

21. In page 10, before section 7, but in Part 2, to insert the following new section:

“Notice of prosecutions for breach of conditions of release.

10.—(1) The Secretary General of the Department of Justice, Equality and Law Reform must give a victim to whom this section applies notice, as soon as practicable of—

- (a) every prosecution of the offender for an offence committed when on parole (temporary or early release),
- (b) every application made for an order that the offender, being subject to a sentence of imprisonment and having been released, be recalled to prison to continue serving his or her sentence for failure to comply with the condition of his or her release, and
- (c) every final disposition of all proceedings (at first instance or, if any, on appeal) relating to a prosecution of that kind.

(2) Nothing in *subsection (1)* prevents notice being given of other matters relating to the offender’s compliance with conditions of his or her release.”

—*Senator Eugene Regan.*

22. In page 10, before section 7, but in Part 2, to insert the following new section:

[SECTION 7]

“Notice of discharge, leave of absence or escape of accused or offender contained in hospital.

11.—Where a person accused of an offence or, as the case requires, the offender is required to be detained in a hospital the Secretary General of the Department of Health and Children shall give a victim—

- (a) reasonable prior notice of an impending discharge of the person or offender,
- (b) reasonable prior notice of the first unescorted leave of absence (if any) granted to the person or offender, and
- (c) notice, as soon as practicable, of every escape by the person or offender.”.

—Senator Eugene Regan.

23. In page 10, before section 7, but in Part 2, to insert the following new section:

“Notice of proposal to consider making deportation order and of any hearing of appeal as to deportation order or any proceedings seeking a judicial review in relation thereto.

12.—(1) If the Minister for Justice, Equality and Law Reform proposes making a deportation order in respect of an offender whose liability to deportation arises out of a conviction for an offence to which this Part applies, the Secretary General of the Department of Justice, Equality and Law Reform shall—

- (a) if practicable, give the victim notice that the Minister proposes to consider making a deportation order in respect of the offender,
- (b) as soon as practicable if an order of that kind is made and the offender concerned appeals against the order or seeks a judicial review, give the victim prior notice of the hearing of the appeal or judicial review,
- (c) where the court proceedings as referred to in *paragraph (b)* take place, as soon as practicable give the victim notice of the outcome of the proceedings, and
- (d) as soon as practicable give to the victim notice of the date when the deportation is effected.

(2) Failure to comply with *subsection (1)* does not invalidate any deportation order made or any decision on an appeal against the making of a deportation order.”.

—Senator Eugene Regan.

24. In page 10, before section 7, but in Part 2, to insert the following new section:

“Appointment of representatives to receive notice.

13.—A victim to whom this Part applies may for any reason he or she thinks fit, appoint any other person (in *sections 13** to *17*** called “the representative”) to receive on the victim’s behalf, and ensure the victim is given and understands any notice to be given to the victim under *sections 7**** to *12**** (in *sections 14*** to *18*** called “the information”).”.

—Senator Eugene Regan.

[*Note: This is a reference to the section proposed to be inserted by this amendment.]

**Note: This is a reference to the section proposed to be inserted by amendment Nos. 28, 25 and 29.]

***Note: This is a reference to the section proposed to be inserted by amendment Nos. 18 and 23.]

25. In page 10, before section 7, but in Part 2, to insert the following new section:

[SECTION 7]

“Effect of appointment of representative.

14.—If a representative of a victim is appointed then unless the appointment is terminated under *section 17**—

- (a) the reference to the victim’s current address in this part must be read as references to the representative’s current address,
- (b) information to which the appointment relates must be given to the representative rather than to the victim, and
- (c) the representative must make all reasonable efforts to receive on the victim’s behalf, and ensure that the victim is given and understands the information to which the appointment relates.”.

—*Senator Eugene Regan.*

[*Note: This is a reference to the section proposed to be inserted by amendment No. 28.]

26. In page 10, before section 7, but in Part 2, to insert the following new section:

“Victim’s support person may be appointed or may appoint representative.

15.—A victim’s support person (person A) may appoint himself or herself, or another support person of the victim, as representative of the victim, on behalf of the victim, if—

- (a) the victim is not, or may not be, capable alone of appointing a representative,
- (b) no representative of the victim has been appointed (whether in reliance on this section or not), and
- (c) person A has discussed the appointment proposed with the victim and with each other support person of the victim who person A knows, or ought reasonably to know, is another support person of the victim.”.

—*Senator Eugene Regan.*

27. In page 10, before section 7, but in Part 2, to insert the following new section:

“Method of appointment of representative.

16.—The appointment of a representative must be by a written notice that—

- (a) identifies the information to which the appointment relates,
- (b) if the representative is appointed for a limited period only, states that period and when it starts,
- (c) includes the representative’s consent to the appointment, and
- (d) is given to the representative, and to the people who are to give the victim, through the representative, the information to which the appointment relates.”.

—*Senator Eugene Regan.*

28. In page 10, before section 7, but in Part 2, to insert the following new section:

“Termination of appointment.

17.—The appointment of a representative may be terminated by notice in writing given—

[SECTION 7]

- (a) by the victim to both the representative and the people who were to give the victim, through the representative, the information to which the appointment relates, or
- (b) by the representative to the victim, and to the people who were to give the victim, through the representative, the information to which the appointment relates.”.

—Senator Eugene Regan.

29. In page 10, before section 7, but in Part 2, to insert the following new section:

“When notice takes effect.

18.—A notice appointing, or terminating the appointment of, a representative, takes effect—

- (a) as soon as it has been given to everyone to whom it is required to be given under *section 17**, or
- (b) if it has been given to each of those people, on any later date stated in it as the date on which it takes effect.”.

—Senator Eugene Regan.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 28.]

30. In page 10, before section 7, but in Part 2, to insert the following new section:

“Communications with Parole Board.

19.—(1) Upon receiving a notice pursuant to *section 8** of the intention of the Parole Board to consider an offender for parole, a victim may make a written submission to the Parole Board within the time specified in such notice.

(2) In considering any application for parole, the Parole Board shall have regard to the Victim Impact Statement, if any, made following the conviction of the offender seeking parole in addition to any written submission received pursuant to *subsection (1)* of this section.”.

—Senator Eugene Regan.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 19.]

31. In page 10, before section 7, but in Part 2, to insert the following new section:

“Communications with Minister.

20.—Upon receiving a notice pursuant to *section 12** or a proposal by the Minister for Justice, Equality and Law Reform to make a deportation order in respect of an offender, the victim in receipt of such notice may make a written submission to the Minister for Justice, Equality and Law Reform within the time specified in the notice.”.

—Senator Eugene Regan.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 23.]

32. In page 11, line 11, to delete “Court of Criminal Appeal” and substitute “Supreme Court”.

—Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.

[SECTION 7]

33. In page 11, line 20, after “adduced” to insert “by the prosecution”.
—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

34. In page 11, line 26, after “concerned” to insert the following:

“, for example DNA evidence or an admission by the person concerned”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 8

35. In page 12, subsection (5), line 36, after “concerned” to insert the following:

“and the person may appear and be heard by the Court”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

36. In page 12, subsection (6), line 38, after “Court” to insert the following:

“if satisfied that the Director has given the person concerned all reasonable notice to facilitate his or her appearance and”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 14

37. In page 18, subsection (1), lines 8 to 11, to delete all words from and including “if” in line 8 down to and including “Court” in line 11.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

Section opposed.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 16

Section opposed.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 17

* **38.** In page 22, lines 1 to 7, to delete subsection (10) and substitute the following:

“(10) Nothing in this section shall affect the power of the Court to issue a warrant for the arrest of a person in respect of whom an order has been made under subsection (1) of section 10.”.

[SECTION 18]

SECTION 18

* 39. In page 23, lines 20 to 23, to delete subsection (8) and substitute the following:

“(8) Nothing in this section shall affect the operation of section 7 of the Criminal Justice Act 2006.”.

SECTION 19

40. In page 23, before section 19, but in Chapter 3, to insert the following new section:

“CHAPTER 4*

Evidence in Criminal Proceedings

19.—In this Chapter—

“Court” includes court-martial;

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

“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 in common law or under statutory criminal law or of the Constitution.”.

—*Senator Eugene Regan.*

[*Note: The proposed new Chapter comprehends the inclusion of amendment Nos. 41, 42 and 43.]

41. In page 23, before section 19, but in Chapter 3, to insert the following new section:

“20.—The common law exclusionary rule which provides that evidence improperly or illegally obtained, which may amount to a breach of the accused's constitutional rights, is automatically excluded from criminal proceedings is hereby abolished.”.

—*Senator Eugene Regan.*

42. In page 23, before section 19, but in Chapter 3, to insert the following new section:

“21.—The Courts in determining the admissibility of improperly or illegally obtained evidence in criminal proceedings shall make such determination by a balancing of the interests of:

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

[SECTION 19]

—*Senator Eugene Regan.*

- 43.** In page 23, before section 19, but in Chapter 3, to insert the following new section:

“22.—In making a determination under *section 21** the Courts shall have regard to all of the circumstances, including:

- (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;
- (b) whether the breach was serious or merely technical in nature;
- (c) the seriousness of the crime;
- (d) whether there were extraordinary excusing circumstances which justifies the admission of the evidence;
- (e) the effect on the administration of justice of including or excluding the evidence.”.

—*Senator Eugene Regan.*

[**Note: This is a reference to the section proposed to be inserted by amendment No. 42.*]

SECTION 23

- 44.** In page 24, subsection (1), line 19, before “arising” to insert the following:

“which gives to a directed verdict or which prevented the jury from considering evidence which was properly admissible or a misdirection of law to the jury”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

- 45.** In page 24, subsection (3), line 28, after “Court” to insert the following:

“if satisfied that the Director has given the person concerned all reasonable notice to facilitate his or her appearance and”.

—*Senators Ivana Bacik, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan.*

SECTION 27

- * **46.** In page 27, before section 27, to insert the following new section:

“Amendment of section 3 of Criminal Justice Act 1994.

27.—Subsection 16 of section 3 of the Criminal Justice Act 1994 is amended, in paragraph (f), by the substitution of the following subparagraph for subparagraph (i):

- “(i) (I) when the defendant is acquitted on all counts, or
- (II) where the provisions of *section 23* of the *Criminal Procedure Act 2009* apply to the proceedings—
- (A) when the time period for an appeal under that section has expired and no appeal has been made,

[SECTION 27]

(B) where an appeal has been made but no re-trial is ordered, at the conclusion of the appeal proceedings under the section, or

(C) where a re-trial has been ordered, at the conclusion of the re-trial;”.”.

SECTION 32

* 47. In page 28, after section 32, to insert the following new section:

“PART 5#

MISCELLANEOUS PROVISIONS

CHAPTER 1

Giving of Evidence

33.—The Criminal Justice Act 1924 is amended—

(a) in section (1)(f)—

(i) in subparagraph (ii)—

(I) by the substitution of “questions of any witness” for “questions for the witnesses for the prosecution”, and

(II) by the substitution of “person in respect of whom the offence was alleged to have been committed” for “prosecutor”,

and

(ii) by the insertion of the following subparagraph after subparagraph (iii):

“(iii*a*) the person has personally or by the person’s advocate asked questions of any witness for the purpose of making, or the conduct of the defence is such as to involve, imputations on the character of a person in respect of whom the offence was alleged to have been committed and who is deceased or is so incapacitated as to be unable to give evidence; or”,

and

(b) by the insertion of the following sections after section 1:

“Evidence of character.

1A.—Where a person charged with an offence intends to adduce evidence, personally or by the person’s advocate, of a witness, including the person, that would involve imputations on the character of a prosecution witness or a person in respect of whom the offence is alleged to have been committed and who is either deceased or so incapacitated as to be unable to give evidence, or evidence of the good character of the person

(a) the person may do so only if he or she—

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Criminal Justice
(Evidence) Act
1924.

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- (i) has given, either personally or by his or her advocate, at least 7 days' notice to the prosecution of that intention, or
 - (ii) has applied to the court, citing the reasons why it is not possible to give the notice, and been granted leave to do so,
- and
- (b) notwithstanding section 1(f), the person may be called as a witness and be asked, and the prosecution may ask any other witness, questions that—
 - (i) would show that the person has been convicted of any offence other than the one wherewith he or she is then charged, or is of bad character, or
 - (ii) would show that the person in respect of whom the offence was alleged to have been committed is of good character.”.”.

[# *The proposed new Part comprehends the inclusion of amendment Nos 48, 49, 50 and 51.*]

* 48. In page 28, after section 32, to insert the following new section:

“Expert evidence adduced by defence. 34.—(1) An accused shall not call an expert witness or adduce expert evidence unless leave to do so has been granted under this section.

(2) Where the defence intends to call an expert witness or adduce expert evidence, whether or not in response to such evidence presented by the prosecution, notice of the intention shall be given to the prosecution at least 10 days prior to the scheduled date of the start of the trial.

(3) A notice under *subsection (2)* shall be in writing and shall include—

- (a) the name and address of the expert witness, and
- (b) any report prepared by the expert witness concerning a matter relevant to the case, including details of any analysis carried out by or on behalf of, or relied upon by, the expert witness, or a summary of the findings of the expert witness.

(4) The court may grant leave to call an expert witness or adduce expert evidence even if no report or summary of the findings are included as required by *subsection (3)(b)*, if the court is satisfied that the accused took all reasonable steps to secure the report or summary before giving the notice.

(5) The court shall grant leave under this section to call an expert witness or adduce expert evidence, on application by the defence, if it is satisfied that the expert evidence to be adduced satisfies the requirements of any enactment or rule of law relating to evidence and that—

- (a) *subsections (2) and (3)* have been complied with,

[SECTION 32]

(b) where notice was not given at least 10 days prior to the scheduled date of the start of the trial, it would not, in all the circumstances of the case, have been reasonably possible for the defence to have done so, or

(c) where the prosecution has adduced expert evidence, a matter arose from that expert's testimony that was not reasonably possible for the defence to have anticipated and it would be in the interests of justice for that matter to be further examined in order to establish its relevance to the case.

(6) The prosecution shall be heard in an application under *subsection (4) or (5)*.

(7) A notice required by this section to be given to the prosecution may be given by delivering it to the prosecutor, or by leaving it at his or her office or by sending it by registered post to his or her office.

(8) Where the court grants leave under this section, the prosecution shall be given a reasonable opportunity to consider the report or summary before the expert witness gives the evidence or the evidence is otherwise adduced.

(9) In this section—

“expert evidence” means evidence of fact or opinion given by an expert witness, and

“expert witness” means a person who appears to the court to possess the appropriate qualifications or experience about the matter to which the witness's evidence relates.”.

* 49. In page 28, after section 32, to insert the following new section:

“Return or disposal of property to be used as evidence.

35.—(1) This section applies where property that is to be entered in evidence in a criminal trial is to be—

(a) returned to its owner, or

(b) disposed of before the trial begins.

(2) Where the prosecution proposes to dispose of property that is to be entered in evidence or return it to its owner before the scheduled date of the start of the trial, the prosecution shall serve a notice under this section (the “prosecution notice”) on the accused at any time that is at least 23 days prior to that date.

(3) The prosecution notice shall contain a description of the property in sufficient detail to identify it and a statement as to the relevance of the property to the proceedings, together with—

(a) one or more photographs of the property, and

(b) any report that the prosecution proposes to enter in evidence arising from the analysis of the property, including analysis of any materials found in or on the property (the “prosecution report of evidence”).

(4) Not later than 7 days after service of the prosecution notice under *subsection (2)*, the defence shall serve on the prosecution a notice in writing (the “defence notice”) that indicates one of the following:

[SECTION 32]

- (a) that the defence accepts the prosecution notice and agrees to the return or disposal of the property;
- (b) that the defence wishes to provide to the prosecution a report that conforms with *subsection (3)* (the “defence report of evidence”);
- (c) that the defence requires the property to be available as an exhibit at the trial.

(5) Where the defence notice served under *subsection (4)* is a notice mentioned in *paragraph (b)* of that subsection, then, notwithstanding *section 34**, the defence shall, not later than 7 days after service of that notice, serve the defence report of evidence on the prosecution.

(6) Where a defence report of evidence is served on the prosecution under *subsection (5)*, the prosecution shall, not later than 3 days prior to the scheduled date of the start of the trial, provide to the defence and the court a notice stating whether it accepts or rejects that notice (the “prosecution notice of reply”).

(7) If the defence notice under *subsection (4)* is made under *paragraph (a)* of that subsection or is made under *paragraph (b)* of that subsection and a defence report of evidence is served under *subsection (5)* and accepted under *subsection (6)*, then

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- (a) a member of the Garda Síochána not below the rank of inspector shall, on receipt by him or her of a copy of the notice referred to in *subsection (4)* or *(6)*, cause the property to be returned or disposed of, as the case may be,
 - (b) the member referred to in *paragraph (a)* shall keep a written record of the return or disposal of the property, and
 - (c) where the property is returned to its owner, the owner shall acknowledge in writing the receipt of the property.

(8) The following rules apply to admissibility of evidence:

- (a) where *subsection (4)(a)* applies, the prosecution report of evidence is proof of the facts stated therein, unless the contrary is shown;
- (b) where *subsection (4)(b)* applies and a defence report of evidence is served on the prosecution under *subsection (5)* and accepted under *subsection (6)*, the defence report of evidence is proof of the facts stated therein, unless the contrary is shown;
- (c) where *subsection (4)(c)* applies, the property may be admitted as evidence in any trial in which the property is otherwise admissible;
- (d) in any other case, a report prepared under *subsection (3)* or *(5)* may be admitted as evidence in any trial in which the property is otherwise admissible.

(9) Any person who prepares information contained in a report under *subsection (3)* or *(5)* may be called to give evidence in relation to all or any part of the report, and may be cross-examined on that evidence.”.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 48.]

[SECTION 32]

* 50. In page 28, after section 32, to insert the following new section:

“CHAPTER 2

Miscellaneous amendments

Amendment of Act
of 1967.

36.—The Act of 1967 is amended—

(a) in section 4, by the substitution in subsection (2), of “instituted or continued except by the Attorney General” for “instituted or continued except by, or on behalf or with the consent of, the Attorney General”, and

(b) in section 4B, by the substitution of the following subsection for subsection (1):

“(1) (a) Subject to subsection (3), the prosecutor shall cause the documents specified in paragraph (b) to be served on the accused or his or her solicitor (if any) not later than 42 days from the date on which—

(i) the accused, on being informed by the District Court of his or her right to be tried by a jury, objects to being tried summarily or the prosecutor informs the court that he or she does not consent to the person being tried summarily for the offence concerned or,

(ii) in the case of an offence in respect of which the prosecutor may elect to prosecute either summarily or on indictment, the prosecutor elects to try the offence on indictment, or

(iii) the District Court determines that the facts alleged do not constitute a minor offence and are not fit to be tried summarily.

(b) The documents referred to in paragraph (a) are:

(i) a statement of the charges against the accused;

(ii) a copy of any sworn information in writing upon which the proceedings were initiated;

(iii) a list of the witnesses the prosecutor proposes to call at the trial;

(iv) a statement of the evidence that is expected to be given by each of them;

(v) a copy of any document containing information which it is proposed to give in evidence by virtue of Part II of the Criminal Evidence Act 1992;

(vi) where appropriate, a copy of a certificate under section 6(1) of that Act;

(vii) a list of the exhibits (if any).”.”.

* 51. In page 28, after section 32, to insert the following new section:

[SECTION 32]

“Amendment to
First Schedule to
Criminal Justice Act
1951.

37.—The First Schedule to the Criminal Justice Act 1951 is amended by the insertion of the following reference:

“26. The offence at common law of breach of the peace.””.

SCHEDULE

* 52. In page 30, after line 40, to insert the following:

“Air navigation offences

21. An offence under section 11 of the Air Navigation and Transport Act 1973 (unlawful seizure of aircraft).

22. An offence under section 3(1) of the Air Navigation and Transport Act 1973 (unlawful acts against the safety of navigation).

Maritime security offences

23. An offence under section 2(1) of the Maritime Security Act 2004.”.

TITLE

* 53. In page 5, to delete lines 25 to 29, and substitute the following:

“APPEAL IN CRIMINAL PROCEEDINGS; TO AMEND THE CRIMINAL JUSTICE (EVIDENCE) ACT 1924 AND TO AMEND AND EXTEND THE LAW RELATING TO EVIDENCE IN OTHER RESPECTS; TO AMEND THE CRIMINAL JUSTICE ACT 1994, THE CRIMINAL PROCEDURE ACT 1967, THE CRIMINAL JUSTICE (LEGAL AID) ACT 1962, THE CRIMINAL JUSTICE ACT 1951, THE OFFENCES AGAINST THE STATE ACT 1939 AND THE COURTS OF JUSTICE ACT 1924; AND TO PROVIDE FOR RELATED MATTERS.”.