



DÁIL ÉIREANN

AN BILLE UM NÓS IMEACHTA COIRIÚIL 2009 CRIMINAL PROCEDURE BILL 2009

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM NÓS IMEACHTA COIRIÚIL 2009 —AN TUARASCÁIL

CRIMINAL PROCEDURE BILL 2009 —REPORT

Leasuithe Amendments

1. In page 6, between lines 33 and 34, to insert the following:

“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—

- (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.”.

—Alan Shatter.

[*Note: The insertion of this new Part comprehends the acceptance of amendments 1 and 2.]

2. In page 6, between lines 33 and 34, to insert the following:

“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.”

—Alan Shatter.

3. In page 6, between lines 33 and 34, to insert the following:

“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.”

—Alan Shatter.

[*Note: The inclusion of this new Part comprehends the inclusion of amendments 3 to 7.]

4. In page 6, between lines 33 and 34, to insert the following:

“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;
- (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;

- (g) 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.

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

—Alan Shatter.

5. In page 6, between lines 33 and 34, to insert the following:

“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.”

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 3.]

**Note: This is a reference to the section proposed to be inserted by Amendment No. 4.]

6. In page 6, between lines 33 and 34, to insert the following:

“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 if the victim—

- (a) cannot receive it, or
- (b) is not or may not be capable alone of understanding it.”.

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 3.]

**Note: This is a reference to the section proposed to be inserted by Amendment No. 4.]

7. In page 6, between lines 35 and 36, to insert the following:

“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.”.

—Alan Shatter.

8. In page 7, line 32, after “by” to insert “the prosecution or”.

—Pat Rabbitte.

9. In page 8, after line 53, 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.”.

—Pat Rabbitte.

10. In page 10, between lines 26 and 27, 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.”.

—Pat Rabbitte.

11. In page 11, between lines 18 and 19, to insert the following:

“Legal representation of victim.

7.—In an application under this section the court may make such order as it sees fit to facilitate limited 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, limited to assistance in connection with the hearing of evidence under this Part.”.

—Pat Rabbitte.

12. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note: The insertion of this new Part comprehends the acceptance of amendments 12 to 25.]

13. In page 11, between lines 18 and 19, to insert the following:

“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)*.

(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.”.

—Alan Shatter.

14. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

15. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

16. In page 11, between lines 18 and 19, to insert the following:

“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.”.
- Alan Shatter.

17. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

18. In page 11, between lines 18 and 19, to insert the following:

“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”).”.

—Alan Shatter.

[*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 No. 22.]

[***Note: This is a reference to the section proposed to be inserted by Amendment No. 12.]

[****Note: This is a reference to the section proposed to be inserted by Amendment No. 17.]

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

[*****Note: This is a reference to the section proposed to be inserted by

Amendment No. 23.]

19. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 22.]

20. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

21. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

22. In page 11, between lines 18 and 19, to insert the following:

“Termination of appointment.

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

- (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.”.

—Alan Shatter.

23. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 22.]

24. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 13.]

25. In page 11, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 17.]

26. In page 11, line 33, after “that” to insert the following:

“, taken together with any other evidence in the proceedings,”.

—Pat Rabbitte.

27. In page 12, line 1, after “adduced” to insert “by the prosecution”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

28. In page 12, line 5, after “adduced” to insert “by the prosecution”.
—Pat Rabbitte.
29. In page 19, lines 6 to 9, to delete all words from and including “if” in line 6 down to and including “Court” in line 9.
—Pat Rabbitte.
30. In page 24, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note The insertion of this new Chapter comprehends the acceptance of amendments 30 to 33.]

31. In page 24, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

32. In page 24, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

33. In page 24, between lines 18 and 19, to insert the following:

“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.”.

—Alan Shatter.

[*Note: This is a reference to the section proposed to be inserted by Amendment No. 32.]

- 34.** In page 25, line 24, to delete “erroneously excluded compelling evidence,” and substitute “substantially weakened the prosecution case,”.

—Pat Rabbitte.

- 35.** In page 30, to delete lines 13 to 20 and substitute the following:

“ (2A) Subject to subsection (2B), a person who has appealed his or her conviction to the Court of Criminal Appeal and who has been granted a re-trial by that Court, may, without prejudice to the determination by the Court to grant a re-trial, appeal to the Supreme Court in respect of a matter raised by him or her in the Court of Criminal Appeal in relation to which that Court—

(a) did not make a determination, or

(b) made a determination against him or her.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.

- 36.** In page 30, line 20, after “determination” to insert the following:

“or that that Court determined adversely to him or her”.

—Pat Rabbitte.

- 37.** In page 34, to delete lines 13 and 14 and substitute the following:

“(a) returned to its owner, or

(b) disposed of,

before the trial begins.”.

—An tAire Dlí agus Cirt agus Athchóirithe Dlí.