



**AN BILLE UM CHEARTAS COIRIÚIL (FAISNÉIS FAOI
CHIONTA IN AGHAIDH LEANAÍ AGUS AOSAIGH
SHOGHONTA A CHOIMEÁD SIAR), 2012**

**CRIMINAL JUSTICE (WITHHOLDING OF INFORMATION
ON OFFENCES AGAINST CHILDREN AND VULNERABLE
PERSONS) BILL 2012**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

This Bill establishes in Irish law an offence of withholding information in relation to specified offences committed against a child or vulnerable person. The offence arises where a person knows or believes that a specified offence has been committed against a child or vulnerable person and he or she has information which would be of material assistance in securing the apprehension, prosecution or conviction of another person for that offence and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.

The Bill also provides for a number of defences against a charge of withholding information.

In addition, the Bill makes amendment to the withholding information offence contained in section 9 of the Offences Against the State (Amendment) Act 1998.

Section 1 — Interpretation

Section 1 contains a standard interpretation provision. The terms used in the Act and defined in subsection (1) are “arrestable offence”, “child”, “Minister”, “prescribed”, “Schedule 1 offence”, “Schedule 2 offence” and “vulnerable person”.

“child” means a person under 18 years of age.

“Schedule 1 offence” is an offence listed in Schedule 1 to the Bill. This Schedule lists those offences relating to which it will be an offence to withhold information where such offences are committed against a child.

“Schedule 2 offence” is an offence listed in Schedule 2 to the Bill. This Schedule lists those offences relating to which it will be an offence to withhold information where such offences are committed against a vulnerable person.

“vulnerable person” is a person who is suffering from either a mental, intellectual or physical disability which is of such a nature as to severely restrict the capacity of that person to guard against

serious exploitation or abuse or, in the case of physical disability, to report such to the Garda Síochána.

Subsection (2) provides that a reference to a scheduled offence shall include an offence of attempting, conspiring to commit, inciting or participating in those offences insofar as the offence of attempting etc., is also an arrestable offence.

Subsection (3) provides that in the case of sexual offences any references to the commission of an offence against a child or vulnerable person include references to where a child or vulnerable adult was the other party to the offence but not the person who committed it.

Section 2 — Offence of withholding information on certain offences against children

This section (and section 3) establish the offences of withholding information under the Bill. Subsection (1) provides that a person shall be guilty of an offence if he or she knows or believes that a specified offence — listed in Schedule 1 to the Bill — has been committed against a child and he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for the offence and fails without reasonable excuse to disclose that information, as soon as it is practicable, to a member of the Garda Síochána.

Subsection (2) confirms that the offence of withholding information will only arise in relation to information received by a person after the passing of the Act. However, the specified offence in relation to which a person receives information may have been committed prior to the Act.

Subsection (3) confirms that a child against whom the specified offence is committed shall not be guilty of an offence under this section. This defence will continue to apply even when the person is no longer a child.

Subsection (4) provides that this section is without prejudice to other rights or privileges that may arise in criminal proceedings by virtue of any rule of law or other enactment which would entitle a person to refuse to disclose information.

Subsection (5) clarifies that the obligation to disclose information which arises under subsection (1) is in addition to, and not in substitution for, any other obligation that person has to disclose that information to the Garda Síochána or any other person. This provision recognises certain professional codes relating to the reporting of suspicions or offences.

Section 3 — Offence of withholding information on certain offences against vulnerable persons

This section replicates the provisions of section 2 and applies them to specified offences committed against vulnerable persons. The specified offences which apply under this section are listed in Schedule 2 to the Bill.

Section 4 — Defences to offence under section 2 or 3

This section sets out specific defences which may be relied on in response to a charge under section 2 or 3 of the Bill.

Under subsection (1), it is a defence if a child or vulnerable person against whom the offence was committed makes it known that they

do not want the offence to be reported to the Garda Síochána. A person accused of an offence under this Bill must show that they knew and relied on that view.

Subsection (2) acknowledges that certain victims may not have the capacity to make their views as to disclosure or otherwise known. Therefore, a rebuttable presumption that a child under 14 does not have capacity to form a view as to whether the offence or information relating to it should be disclosed to the Garda Síochána is included. Similarly, a rebuttable presumption as to the lack of capacity of a vulnerable person (as defined by paragraph (a) of the definition of vulnerable persons in section 1(1)) is included.

Where a person against whom an offence is committed lacks capacity as outlined under subsection (2), then subsection (3) confirms that the defences under subsections (4), (5) and (8) may be raised by a person accused of an offence under section 2 or 3.

The defence under subsection (4) allows an accused person to rely on the views of a parent or guardian who, acting on behalf of the child or vulnerable person, makes it known that they do not want the information disclosed. This defence arises where the circumstances set out in subsection (3) regarding the lack of capacity of the victim are shown.

Subsection (5) confirms that a parent or guardian of a child or vulnerable person, in the circumstances specified in subsection (3), may also rely on the defence of acting on behalf of that child or vulnerable person.

The defences under subsections (4) or (5) require that the parent or guardian concerned must have reasonable grounds for forming the view on behalf of the child or vulnerable person and must act in the bona fide best interest of that child or vulnerable person (subsection (6)).

Subsection (7) provides an exception to the defences under subsections (4) and (5). These defences will not apply where the parent or guardian purports to act on behalf of the child in circumstances where the person who is known or believed to have committed the specified offence against the child or vulnerable person is a family member of that parent or guardian. “family member” is defined in subsection (17).

Under subsection (8), where a designated professional (acting in circumstances where subsection (7) applies i.e., the perpetrator of the specified offence is a family member of the parent or guardian) makes it known, on behalf of the child or vulnerable person, that the information relating to the offence should not be disclosed, any person who knew of and relied upon that view can claim a defence. The designated professional must be treating the child or vulnerable person in respect of injury or harm arising from the specified offence. A designated professional is in effect a health professional as set out under subsection (17).

Subsection (9) confirms that a parent or guardian or a designated professional shall, for the purpose of considering, on behalf of the child, whether or not to disclose information relating to a specified offence committed against a child or vulnerable person, have regard to the wishes of that child or vulnerable person.

Subsection (10) provides a designated professional with a defence against a charge under sections 2 or 3 where he or she is treating the

child or vulnerable person in respect of injury or harm arising from the specified offence and has formed the view that the information relating to the offence should not be disclosed.

Subsection (11) limits the defences under subsections (8) and (10) by providing that reliance on the defence requires that there are reasonable grounds for believing that the decision of the designated professional not to disclose information was necessary to protect the health and well-being of the child or vulnerable person. It will also be necessary to show that the designated professional, in forming his or her view not to disclose the information relating to the offence, acted by reference to and applied the standards of practice and care that could reasonably be expected of a member of that profession.

Subsections (12) and (13) permit the Minister to prescribe for the purpose of these sections an organisation or body (subsection (12)) or class or class of persons within such organisations or bodies (subsection (13)) where such organisations, bodies or person(s) provide services to children or vulnerable persons who have been physically or sexually abused.

Subsection (14) provides a defence for prescribed persons. Similar to the defence for designated professionals under subsection (10), a prescribed person may rely on a defence against a charge under section 2 or 3, in circumstances where that person is providing services in respect of the injury or harm caused to the child or vulnerable person and has formed a view that the offence or information relating to it should not be disclosed. The limitations under subsection (11) in relation to designated professionals are replicated for prescribed persons (subsection (15)).

Subsection (16) confirms that this section is without prejudice to other defences to a criminal charge which are recognised by law.

Subsection (17) contains definitions relevant to this section.

Subsection (18) provides clarification that a family member includes adopted persons.

Section 5 — Penalties

This section sets out a graduated list of penalties for the offence of withholding information which are related to the gravity of the specified offence concerning which information is being withheld.

Section 6 — Amendment of section 9 of Offences Against the State (Amendment) Act 1998

Section 9 of the Offences Against the State (Amendment) Act 1998 (“1998 Act”) provides for an offence of withholding information in relation to serious offences (excluding sexual offences). In order to avoid overlap between the offences for which it would be an offence to withhold information under this Bill and those offences under the 1998 Act, it is necessary to distinguish between the offences to which the 1998 Act will apply and the specified offences to which this Bill will apply.

Subsection (1) substitutes two new subsections for subsection (3) of section 9 of the 1998 Act. It essentially confirms that offences against children are not covered by the 1998 Act (they will now be covered by the provisions of this Bill). It also confirms that the 1998 Act will not apply to the common law offence of false imprisonment committed against a person, other than a child. Under this Bill (paragraph 1 of Schedule 2), it will be an offence to withhold information concerning the common law offence of false

imprisonment where that offence is committed against a vulnerable person. The remaining offences listed in Schedule 2 are not offences which would, in any event, have been covered by the 1998 Act i.e., are sexual offences or do not carry the level of injury required by the definition of serious offence under the 1998 Act.

Subsection (2) confirms that the amendment of section 9 of the 1998 Act does not affect the previous operation of that section, any penalty or punishment imposed under it or prejudice or affect any proceedings pending at the time of the amendment.

Subsection (3) confirms that offences committed under section 9 of the 1998 Act prior to the amendment introduced by this section, may be instituted, continued or enforced and any appropriate penalty or punishment may be imposed.

Section 7 — Orders

This is a standard provision permitting the Minister for Justice and Equality to make orders prescribing matters under this Bill. Such orders, other than a commencement order under section 9(2), shall be laid before each House of the Oireachtas.

Section 8 — Expenses

This is a standard provision providing for expenses in relation to the administration of the Act.

Section 9 — Short title and commencement

This provision confirms the short title as: Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.

Subsection (2) allows for the commencement of the Act.

Schedule 1

This Schedule sets out those offences, if committed against children, in relation to which it would be an offence to withhold information under section 2 of the Bill.

Schedule 2

This Schedule sets out those offences, if committed against vulnerable persons, in relation to which it would be an offence to withhold information under section 3 of the Bill.

Financial Implications

It is not expected that the proposed legislation will result in any significant costs to the Exchequer.

*An Roinn Dlí and Cirt agus Comhionannais,
Aibreán, 2012.*