



**AN BILLE UM AN DLÍ COIRIÚIL (DAOINE SCOTHAOSTA
A CHOSAINT) (PIANBHREITH A GHEARRADH) (LEASÚ),
2014**

**CRIMINAL LAW (PROTECTION OF OLDER PEOPLE)
(SENTENCING) (AMENDMENT) BILL 2014**

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to amend certain provisions of the Non-Fatal Offences Against The Person Act 1997 and the Criminal Justice (Theft and Fraud Offences) Act 2001, in particular in proceedings in criminal matters to establish rules relating to the sentencing of offences where the victim or victims of the offences are 65 years of age or older at the time of the commission of the offence.

The Bill provides for a mandatory sentencing provision where the court is satisfied that an individual who commits an offence as set out in the bill, knows or is reckless to the fact that the victim of that offence is 65 years of age or older.

The Bill defines people who are 65 years of age or older as older people. Academic studies¹ on the abuse and neglect of older people in Ireland use 65 years of age as the appropriate age related benchmark. The definition of an older person as 65 years will not create a more general definition of an older person in Irish law; the definition of older person used shall be restricted to the provisions of the Bill.

Currently there are no specific statutory provisions in the criminal law dealing with the vulnerability of older persons to assault, assault causing harm, offences causing serious harm, threats to kill or cause serious harm, false imprisonment, burglary and robbery. The vulnerability of a victim may be taken into account by a judge when sentencing, as an aggravating factor in addition to factors such as the use of violence, degrading behaviour, premeditation, the use of excessive force². The Bill introduces mandatory sentences as a factor in sentencing, in recognition of the fact that older people are often targeted by criminals due to vulnerability associated with their age. Mandatory sentences for individuals targeting older people create a powerful deterrence against certain violent crimes.

¹Naughton et al. in publication "Abuse and Neglect of Older People in Ireland: Report on the National Study of Elder Abuse and Neglect" [National Centre for the Protection of Older People UCD School of Nursing, Midwifery and Health Systems -2010]

²See generally DPP v Tiernan [1989] I.L.R.M. 149 for non-exhaustive list of factors which may be considered by sentencing Judge as aggravating factors at the sentencing stage.

The offences addressed in this Bill are often associated with the course of an aggressive burglary or robbery where the target is an older person living alone in the community.

Section 6 creates the offence of ‘distraction burglary’ in Irish law. Distraction burglary is a crime in which elderly persons are often the targets. The perpetrator of a distraction burglary will employ subterfuge, deceit or some manner of trick to deceive an occupant into allowing the thief entry to the house to steal items or money. This deceit may take the form of a caller who comes to the door under the guise of a public official, door-to-door salesperson, a person asking for directions or a person asking about working on the property. A perpetrator may also distract the attention of the occupant of a house to enable an accomplice to enter the house while the occupier is distracted and steal items or money.³.

Older people who are the victim of burglary, robbery or a violent assault relate that the crimes have a devastating effect in terms of damage to property and injury⁴.

Irish criminal law takes into account the age of a victim in sentencing under the provisions of section 2 of the Criminal Law (Rape) (Amendment) Act 1990 which sets out that a sexual assault has a maximum sentence of 10 years imprisonment or 14 years imprisonment if the victim is aged under 17 years of age. The provision for a longer sentence where the victim is under a certain age recognises that a victim may be at greater risk and more vulnerable due to age. This Bill will introduce similar provisions concerning older people into the Non-Fatal Offences Against the Person Act 1997 and the Criminal Justice (Theft and Fraud Offences) Act 2001.

Summary of the Provisions of the Bill

Section 1

This section defines the key terms used in the Bill.

Subsection (1) provides a definition for the term “curtilage”, meaning the area immediately surrounding or adjacent to the dwelling and which is used in conjunction with it, other than any part of that area which is a public place. That is to say any place where the public may have access whether of right or with permission and whether such access is free of charge or subject to charge. The term “dwelling” is defined as including a structure, whether temporary or not, which is constructed or adapted for use as a dwelling and which is being used for that purpose. The term dwelling also includes a vehicle or a vessel which is constructed or adapted for use as a dwelling and is being used in that way. All references in the Bill to a dwelling includes a reference to the curtilage of the dwelling.

Subsection (2) provides a definition of an “older person”, which means a person who is 65 years of age or older. Furthermore this subsection restricts this definition to the provisions of the Bill by providing that nothing in this Act shall be construed to supersede, create or in any manner alter the definition of an older person in any other enactment, rule of equity or in any other provision of law or diminish or affect

³See generally Lister, S. and Wall, D.S. (2006) ‘Deconstructing Distraction Burglary: an ageist offence’, pp. 107-123 in A. Wahidin and M. Cain, (eds) (2006) Ageing, Crime and Society, Cullompton: Willan Publishing.

⁴See generally Report on the Consultation Session with Older Citizens on the Issue of Crime [Department of Justice and Equality January 2011].

in any other manner the common law or statutory rights of any individual.

Subsection (3) provides for a definition of “deceit” where deceit means that a person intentionally creates or reinforces a false impression, including a false impression as to law, value or intention or other state of mind, of that person and prevents another person from acquiring further or true information which would affect that person’s judgment of a transaction or incident or fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another in the course of the commission of an offence under the provisions of the Bill.

Subsection (4) provides for a definition of “distraction” which means making a claim or a statement, in oral or written form, where the statement or claim is not made in good faith and employs some technique or element of subterfuge, which may include impersonating another person, with the intention of distracting the attention of the occupant of a dwelling, or enticing the occupant to allow entry to a person who intends to commit an offence.

Subsection (5) provides for a definition of “falsehood” which means a claim or statement not made in good faith by a person in the commission of an offence and with the intention of creating a false impression in the mind of another as to the persons actual intention.

Section 2

This section amends section 3 of the Act of the Non-Fatal Offences Against the Person Act 1997 by inserting a new *subsection 3(3)* introducing a special provision in relation to Assault causing harm where the person who is so assaulted is an ‘older person’.

Section 3 subsection (3)(a) provides that where a person commits an offence at subsection (1) of section 3 of the Non-Fatal Offences Against the Person Act 1997, and at the time of the commission of the offence, knew or was reckless to the fact that the other person was an ‘Older Person’ shall be guilty of an offence. The term ‘older person’ will be interpreted as set out under *section (1)(2)*.

Section 3 subsection (3)(b) provides that under any criminal proceedings under the section, the accused must rebut the presumption to either the court or the jury, as the case may be, that the accused either knew or was reckless to the fact that the other person was an older person. The onus shall be on the accused to show the contrary, however the court must have regard to the presence or absence of reasonable grounds for the defendant’s rebutting the presumption and all other relevant circumstances.

Section 3 subsection (3)(c)(i) provides that where a person is found guilty of an offence under this subsection, and the offence is tried on indictment, the court must first determine to impose a term of imprisonment to a person found guilty of an offence under this subsection before the remaining provisions of the subsection are activated.

Section 3 subsection (3)(c)(ii) provides that where the court, considering the circumstances of the offence and the evidence

adduced to the court, is satisfied that the person found guilty of an offence under this subsection at the time of the commission of the offence either knew or was reckless to the fact that the other person was an older person then the fact that the offence was committed against an older person shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the court considers that there are exceptional circumstances justifying otherwise), in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 7 years imprisonment.

Section 3

This section amends section 4 of the Non-Fatal Offences Against the Person Act of 1997 by inserting a new subsection 4(3) introducing special provisions in relation to causing serious harm where the person who is so harmed is an ‘older person’

Section 4 subsection (3)(a) provides that where a person who intentionally or recklessly causes serious harm to another person, and at the time of the commission of the offence the person knew or was reckless to the fact that the other person was an ‘older person’ shall be guilty of an offence. The term ‘older person’ will be interpreted as set out under *section (1)(2)*.

Section 4 subsection (4)(3)(b) provides that under any criminal proceedings under the section, the accused must rebut the presumption to either the court or the jury, as the case may be, that the accused either knew or was reckless to the fact that the other person was an older person. The onus shall be on the accused to show the contrary, however the court must have regard to the presence or absence of reasonable grounds for the defendant’s rebutting the presumption and all other relevant circumstances.

Section 4 subsection (3)(c)(i) provides that where a person is found guilty of an offence under this subsection, and the offence is tried on indictment, the court must first determine to impose a term of imprisonment to a person found guilty of an offence under this subsection before the remaining provisions of the subsection are activated.

Section 4 subsection (3)(c)(ii) provides that where the court, considering the circumstances of the offence and the evidence adduced to the court, is satisfied that the that the person found guilty of an offence under this subsection at the time of the commission of the offence either knew or was reckless to the fact that the other person was an older person then the fact that the offence was committed against an older person shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the court considers that there are exceptional circumstances justifying otherwise), in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years imprisonment.

Section 4

This section amends section 5 of the Non-Fatal Offences Against the Person Act of 1997 by inserting a new subsection 5(3) introducing special provisions in relation to threats to kill or cause serious harm where the person who is so threatened is an ‘older person’

Section 5 subsection (3)(a) provides that a person who is guilty of an offence at subsection (1) of section 5 of the 1997 Act and at the time of the commission of the offence the person knew or was reckless to the fact that the other person was an ‘older person’ shall be guilty of an offence shall be guilty of an offence. The term ‘Older Person’ will be interpreted as set out under *section (1)(2)*.

Section 5 subsection (3)(b) provides that under any criminal proceedings under the section, the accused must rebut the presumption to either the court or the jury, as the case may be, that the accused either knew or was reckless to the fact that the other person was an older person. The onus shall be on the accused to show the contrary, however the court must have regard to the presence or absence of reasonable grounds for the defendant’s rebutting the presumption and all other relevant circumstances.

Section 5 subsection (3)(c)(i) provides that where a person is found guilty of an offence under this subsection, and the offence is tried on indictment, the court must first determine to impose a term of imprisonment to a person found guilty of an offence under this subsection before the remaining provisions of the subsection are activated.

Section 5 subsection (3)(c)(ii) provides that where the court, considering the circumstances of the offence and the evidence adduced to the court, is satisfied that the person found guilty of an offence under this subsection at the time of the commission of the offence either knew or was reckless to the fact that the other person was an older person then the fact that the offence was committed against an older person shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the court considers that there are exceptional circumstances justifying otherwise), in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years imprisonment.

Section 5

This Section amends section 15 of the Non-Fatal Offences Against the Person Act of 1997 by inserting a new subsection 15(4) introducing special provisions in relation to false imprisonment where the person who is the victim of the offence is an ‘older person’

Section 15 subsection (4)(a) provides that a person who is guilty of an offence at subsection (1) of section 5 of the 1997 Act and at the time of the commission of the offence the person knew or was reckless to the fact that the other person was an ‘older person’ shall be guilty of an offence shall be guilty of an offence. The term ‘older person’ will be interpreted as set out under *Section (1)(2)*.

Section 15 subsection (4)(b) provides that under any criminal proceedings under the section, the accused must rebut the presumption to either the court or the jury, as the case may be, that the accused either knew or was reckless to the fact that the other person was an older person. The onus shall be on the accused to show the contrary, however the court must have regard to the presence or absence of reasonable grounds for the defendant’s rebutting the presumption and all other relevant circumstances.

Section 15 subsection (4)(c)(i) provides that where a person is found guilty of an offence under this subsection, and the offence is tried on indictment, the court must first determine to impose a term of imprisonment to a person found guilty of an offence under this

subsection before the remaining provisions of the subsection are activated.

Section 15 subsection (4)(c)(ii) provides that where the court, considering the circumstances of the offence and the evidence adduced to the court, is satisfied that the person found guilty of an offence under this subsection at the time of the commission of the offence either knew or was reckless to the fact that the other person was an older person then the fact that the offence was committed against an older person shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the court considers that there are exceptional circumstances justifying otherwise), in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years imprisonment.

Section 6

This section amends section 12 of the Criminal Justice (Theft and Fraud Offences) Act 2001 by inserting new subsections 12(5) and 12(6) introducing special provisions in relation to the offence of burglary where the person who is the victim of the offence is an ‘older person’.

Section 12 subsection (5) provides that in addition to the provisions of section 12 of the Criminal Justice (Theft and Fraud Offences) Act 2001, a person is guilty of burglary against an older person if he or she enters any dwelling or part of a dwelling as a trespasser and with intent to commit an arrestable offence where any occupant of that dwelling is an older person, that person shall be guilty of an offence. The definition of dwelling is given at *section 1(2)*.

Section 12 subsection (5)(b) provides that where a person enters any dwelling, part of a dwelling or the curtilage of a dwellings, as defined in section 1(1), and uses a falsehood, deceit or distraction on an occupant of a dwelling to gain, or try to gain, access to the dwelling with intent to commit an arrestable offence that person shall be guilty of an offence. This subsection creates the offence of distraction burglary against an older person in Irish law. The definition of falsehood is given in section 1(5). The definition of deceit is given in section 1(3). The definition of distraction is given in section 1(4). The subsection also provides that assisting another person to gain access to a dwelling to commit an arrestable offence by distracting the occupant where the occupant is an older person shall be an offence.

Section 12 subsection (6)(a) provides that where a person who is guilty of an offence at *subsection (5)*, and at the time of the commission of the offence the person knew or was reckless to the fact that the other person was an ‘older person’ shall be guilty of an offence shall be guilty of an offence. The term ‘older person’ will be interpreted as set out under *Section (1)(2)*.

Section 12 subsection (6)(b) provides that under any criminal proceedings under *subsection 5*, the accused must rebut the presumption to either the court or the jury, as the case may be, that the accused either knew or was reckless to the fact that the other person was an older person. The onus shall be on the accused to show the contrary, however the court must have regard to the presence or absence of reasonable grounds for

the defendant's rebutting the presumption and all other relevant circumstances.

Section 12 subsection (6)(c)(i) provides that where a person is found guilty of an offence under this subsection, and the offence is tried on indictment, the court must first determine to impose a term of imprisonment to a person found guilty of an offence under this subsection before the remaining provisions of the subsection are activated.

Section 12 subsection (6)(c)(ii) provides that where the court, considering the circumstances of the offence and the evidence adduced to the court, is satisfied that the person found guilty of an offence under this subsection at the time of the commission of the offence either knew or was reckless to the fact that the other person was an older person then the fact that the offence was committed against an older person shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the court considers that there are exceptional circumstances justifying otherwise), in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 7 years imprisonment.

Section 7

This section amends section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001 by inserting the new subsections 14(3) and 14(4) introducing special provisions in relation to the offence of Robbery where the person who is the victim of the offence is an 'older person'.

Section 14 subsection (3) provides that in addition to the provisions of section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001, a person is guilty of Robbery against an older person if he or she if he or she steals, and immediately before or at the time of doing so, and in order to do so, uses force on any older person or puts or seeks to put any older person in fear of being then and there subjected to force, that person shall be guilty of an offence.

Section 14 subsection (4)(a) provides that where a person who is guilty of an offence at *subsection (3)*, and at the time of the commission of the offence the person knew or was reckless to the fact that the other person was an 'older person' shall be guilty of an offence shall be guilty of an offence. The term 'older person' will be interpreted as set out under *section (1)(2)*.

Section 14 subsection (4)(b) provides that under any criminal proceedings under *subsection 3*, the accused must rebut the presumption to either the court or the jury, as the case may be, that the accused either knew or was reckless to the fact that the other person was an older person. The onus shall be on the accused to show the contrary, however the court must have regard to the presence or absence of reasonable grounds for the defendant's rebutting the presumption and all other relevant circumstances. *Section 14 subsection (4)(c)(i)* provides that where a person is found guilty of an offence under this subsection, and the offence is tried on indictment, the court must first determine to impose a term of imprisonment to a person found guilty of an offence under this subsection before the remaining provisions of the subsection are activated.

Section 14 subsection (4)(c)(ii) provides that where the court, considering the circumstances of the offence and the evidence adduced to the court, is satisfied that the person found guilty of an offence under this subsection at the time of the commission of the offence either knew or was reckless to the fact that the other person was an older person then the fact that the offence was committed against an older person shall be treated for the purpose of determining the sentence as an aggravating factor and the court shall (except where the court considers that there are exceptional circumstances justifying otherwise), in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years imprisonment.

Section 8

This section provides for general defences in law, and states that nothing in the Bill will operate to prejudice any defence which is recognised by law as a defence to a criminal charge.

Section 9

This is a standard form section providing for the Short title and commencement of the Act.

*Senator Rónán Mullen,
Íúil, 2014.*