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**An Bille um Chiontuithe Gnéasacha (Leasú), 2019**  
**Sexual Offences (Amendment) Bill 2019**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE UM CHIONTUITHE GNÉASACHA (LEASÚ), 2019**  
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ACTS REFERRED TO

Criminal Law (Rape) Act 1981 (No. 10)

Criminal Law (Sexual Offences) Act 1993 (No. 20)

Criminal Law (Sexual Offences) Act 2006 (No. 15)



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**AN BILLE UM CHIONTUITHE GNÉASACHA (LEASÚ), 2019  
SEXUAL OFFENCES (AMENDMENT) BILL 2019**

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# **Bill**

*entitled*

An Act to amend the Criminal Law (Rape) Act 1981 (as amended) to enable complainants to be heard and legally represented in relation to applications to adduce evidence about the clothing worn by a complainant at the time of the alleged offence; and to amend the provisions in respect of previous sexual history evidence and to provide for related matters. 5

**Be it enacted by the Oireachtas as follows:** 10

## **Interpretation**

1. In this Act, unless the context otherwise requires—

“Act of 1981” means the Criminal Law (Rape) Act 1981;

“Minister” means the Minister for Justice and Equality.

**Amendment of section 4A of Act of 1981 - previous sexual history evidence** 15

2. The Act of 1981 is hereby amended in section 4A—

(a) by the substitution of the following for subsection (1):

“(1) Where notice of intention to make an application under section 3 is given by or on behalf of an accused person who is for the time being charged with an offence to which this section applies, the complainant shall be entitled to be advised in respect of the notice and to be legally represented during the hearing of any application for leave to cross-examine on and/or adduce evidence of the complainant’s evidence and the hearing of all evidence adduced pursuant to section 3.” 20

and 25

(b) by the substitution of the following for subsection (6):

“(6) This section applies to a rape offence, an offence under the Criminal Law (Sexual Offences) Act 2006, an offence under section 6 of the Criminal Law (Sexual Offences) Act 1993 and any of the following, namely, aggravated sexual assault, attempted aggravated sexual assault, aiding, abetting, counselling and procuring aggravated sexual 30

assault or attempted aggravated sexual assault, incitement to aggravated sexual assault, sexual assault and conspiring to commit any of the foregoing offences.”.

**Amendment of Act of 1981 - clothing worn by complainants**

3. The Act of 1981 is hereby amended by the insertion of the following after section 4A: 5
- “4B. (1) If at a trial any person is for the time being charged with an offence to which this section applies and said accused person has pleaded not guilty, then, except with the leave of the judge, no evidence shall be adduced and no question shall be asked in cross-examination of the complainant at the trial, by or on behalf of any accused person at the trial, about the clothing worn by the complainant at the time of the alleged offence. 10
- (2) (a) The judge shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to him, in the absence of the jury, by or on behalf of an accused person. 15
- (b) The judge shall give leave if, and only if, he is satisfied that it would be unfair to the accused person to refuse to allow the evidence to be adduced or the question to be asked, that is to say, if he is satisfied that, on the assumption that if the evidence or question was not allowed the jury might reasonably be satisfied beyond reasonable doubt that the accused person is guilty, the effect of allowing the evidence or question might reasonably be that they would not be so satisfied. 20
- (3) If, notwithstanding that the judge has given leave in accordance with this section for any evidence to be adduced or question to be asked in cross-examination, it appears to the judge that any question asked or proposed to be asked (whether in the course of so adducing evidence or of cross-examination) in reliance on the leave which he has given is not or may not be such as may properly be asked in accordance with that leave, he may direct that the question shall not be asked or, if asked, that it shall not be answered except in accordance with his leave given on a fresh application under this section. 25 30
- (4) Nothing in this section authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.
- (5) Where a justice of the District Court conducts a preliminary examination of a charge of a rape offence, then, except with the leave of the justice, evidence shall not be adduced and a question shall not be asked at the examination which, if the examination were a trial such as is mentioned in subsection (1), could not be adduced or asked without leave in pursuance of this section. 35 40
- (6) On an application for leave the justice shall—
- (a) refuse leave unless he is satisfied that leave in respect of the evidence or question would be likely to be given at such a trial, or

(b) give leave if he is so satisfied.

- 4C. (1) Where an application under section 4B is made by or on behalf of an accused person who is for the time being charged with an offence to which this section applies, the complainant shall be entitled to be advised in respect of the notice and to be legally represented during the hearing of any application for leave to cross-examine on and/or adduce evidence of, the complainant's clothing at the time of the alleged offence. The complainant's legal representative shall be entitled to present in Court during the hearing of the complainant's evidence and the hearing of all evidence adduced pursuant to section 4B. 5 10
- (2) Notice of intention to make an application under section 4B shall be given to the prosecution by or on behalf of the accused person before, or as soon as practicable after, the commencement of the trial for the offence concerned or, as the case may be, the commencement of the proceeding concerned referred to in section 4(1). 15
- (3) The prosecution shall, as soon as practicable after the receipt by it of such a notice, notify the complainant of his or her entitlement to be heard in relation to the said application and to be legally represented, for that purpose, during the course of the application. This legal representation shall provide for the complainant's legal representatives remaining in court for the duration of the complainant's evidence to the court and for the hearing of any other evidence that is adduced following a ruling under this section. 20
- (4) The judge shall not hear the said application without first being satisfied that subsections (2) and (3) have been complied with. 25
- (5) If the period between the complainant's being notified, under subsection (3), of his or her entitlements under this section and the making of the said application is not, in the judge's opinion, such as to have afforded the complainant a reasonable opportunity to arrange legal representation of the kind referred to in this section, the judge shall postpone the hearing of the application (and, for this purpose, may adjourn the trial or proceeding concerned) for a period that the judge considers will afford the complainant such an opportunity. 30
- (6) This section applies to a rape offence, an offence under the Criminal Law (Sexual Offences) Act 2006, an offence under section 6 of the Criminal Law (Sexual Offences) Act 1993 and any of the following, namely, aggravated sexual assault, attempted aggravated sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault or attempted aggravated sexual assault, incitement to aggravated sexual assault, sexual assault and conspiring to commit any of the foregoing offences. 35 40
- (7) The Minister shall introduce regulations to provide for time limits for the giving of notice intention to apply to the trial judge under this section, to include the criteria to be considered by a trial judge upon a 45

late application for leave to have such evidence admitted.”.

**Short title and commencement**

4. (1) This Act may be cited as the Sexual Offences (Amendment) Act 2019.
- (2) This Act shall come into operation on such day or days as may be fixed by order of the Minister.

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An Bille um Chiontuithe Gnéasacha (Leasú),  
2019

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do leasú an Achta um an Dlí Coiriúil (Banéigean), 1981 (arna leasú) chun a chumasú gearánaigh a éisteacht agus ionadaíocht dhlíthiúil a bheith acu i ndáil le hiarratais ar fhianaise a thabhairt ar aird maidir leis na héadaí arna gcaitheamh ag an ngearánach tráth an chiona líomhnaithe; do leasú na bhforálacha i leith fianaise ar stair ghnéasach roimhe sin agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*Na Teachtaí Donnchadh Ó Laoghaire agus Máirtín Ó Cionnaith a thug isteach,*

*11 Nollaig, 2019*

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Sexual Offences (Amendment) Bill 2019

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*(as initiated)*

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An Act to amend the Criminal Law (Rape) Act 1981 (as amended) to enable complainants to be heard and legally represented in relation to applications to adduce evidence about the clothing worn by a complainant at the time of the alleged offence; to amend the provisions in respect of previous sexual history evidence and to provide for related matters.

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*Introduced by Deputies Donnchadh Ó Laoghaire and Martin Kenny,*

*11th December, 2019*

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