



An Bille um Cheartas Coiriúil (Leasú), 2022
Criminal Justice (Amendment) Bill 2022

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Explanatory Memorandum



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CRIMINAL JUSTICE (AMENDMENT) BILL 2022

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Purpose of the Bill

The purpose of this Bill is to increase and improve the information available to the court at the time that a convicted sex offender is before the court for sentencing. This in turn will better ensure that the rights of a victim not to be re-traumatised by the court experience. The current practice whereby character references could present unvouched evidence will be replaced by a system whereby such evidence proffered in mitigation of a sexual or violent crime can be questioned by prosecutor or victims who would get an opportunity to respond. It should normally be given on oath or affirmation. The Bill provides for legal representation for of the victim at this point in the proceedings. Such representative will now be allowed by this law, cross examine and question in court any referee produced by the Defendant as evidence of their good character.

Background

The Irish sentencing system requires credit to be given for mitigating factors including the convicted offender's personal circumstances. Sentences are decided on an individual basis in Irish courts. Current practice does not require any enquiry into the veracity or the relevance of the referee's unvouched testimony, particularly in relation to evidence of good character.

This is a particular gap in the sentencing process where the victim believes that the defendant has taken advantage of their community, family or public reputation to commit offences or to hide their detection. In sexual offence cases, this is a particular risk where the offender's defence in court will typically contain strategies to persuade the court of the victim's lack of credibility.

Victims have been humiliated and re-traumatised by evidence which they are powerless to contest or challenge in a process where they are denied a voice.

As a result of the Victims' Directive which now has direct effect in Irish law and the Victims of Crime Act, the State must put measures in place to protect victims and their families from secondary and repeat victimisation, and from the risk of emotional or psychological harm. The continued practice of permitting such evidence of good character to be presented unvouched and unopposed risks such harm to victims of sexual offences. This law will change that.

Provisions of the Bill

Section 1 amends the Criminal Justice Act 1993 by inserting sections 5C to 5E into the Act.

Section 5C regulates the manner in which character evidence may be adduced by or on behalf of persons convicted of certain sexual offences in sentencing proceedings in relation to those offences. The section requires that where such persons wish to have evidence relating to their character adduced on their behalf in sentencing proceedings, they must first seek the leave of the court to do so. The court may not give such leave if the evidence relates to matters that, in the court's opinion, facilitated the commission of the offence. Where leave is given under this section, the prosecution and the complainant can put questions to any person giving such evidence or otherwise challenge that evidence and for that purpose the prosecution must notify the complainant of the nature of the evidence to be adduced and the complainant's rights under the section. The prosecution or the complainant may also seek further information in relation to the evidence to be adduced. If a complainant is deceased, a family member may also question or otherwise challenge the evidence concerned. Where evidence is given in accordance with leave given under this section, such evidence must be given orally in court on oath, by way of a sworn affidavit or by way of written evidence that is accompanied by a statutory declaration that the written evidence is correct to the best of knowledge of the person concerned.

Section 5D provides that where evidence is adduced in relation to a convicted person's character in accordance with leave given under section 5C, the prosecution may adduce evidence in response and may call such witnesses as appears appropriate for that purpose.

Section 5E construes references to "legal aid" in the Civil Legal Aid Act 1995 to include representation by a solicitor or barrister for the purposes of section 5C.

Section 2 amends section 28 of the Civil Legal Aid Act 1995, to provide an automatic entitlement to any complainant or family member to whom section 5C of the Criminal Justice Act 1993 relates to legal aid under the Civil Legal Aid Act 1995 for the purposes of the said section 5C.

Section 3 is a standard form provision and provides for the short title of the Bill and commencement of the Bill upon enactment.

*Senators Regina Doherty, Lisa Chambers and Pauline O'Reilly,
Máirtín, 2022.*