



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

Mar a ritheadh ag Seanad Éireann

As passed by Seanad Éireann



AN BILLE UM CHEARTAS COIRIÚIL (LEASÚ), 2022
CRIMINAL JUSTICE (AMENDMENT) BILL 2022

Mar a ritheadh ag Seanad Éireann

As passed by Seanad Éireann

CONTENTS

Section

1. Provisions in relation to certain evidence in sentencing for sexual offences, etc.
2. Short title and commencement

ACTS REFERRED TO

Civil Legal Aid Act 1995 (No. 32)

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Criminal Evidence Act 1992 (No. 12)

Criminal Justice Act 1993 (No. 6)



**AN BILLE UM CHEARTAS COIRIÚIL (LEASÚ), 2022
CRIMINAL JUSTICE (AMENDMENT) BILL 2022**

Bill

entitled

An Act to amend the Criminal Justice Act 1993, to amend the Civil Legal Aid Act 1995 and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Provisions in relation to certain evidence in sentencing for sexual offences, etc.

1. The Criminal Justice Act 1993 is amended by inserting the following sections after section 5B— 10

“Provisions in relation to certain evidence in sentencing for sexual offences

5C. (1) Where a person (in this section referred to as a ‘convicted person’) has been convicted of a sexual offence the following provisions shall apply:

(a) the court may adjourn sentencing of the convicted person for such period as the court considers appropriate, but any such adjournment shall be subject, where applicable, to the requirement under subsection (9) to further adjourn the sentencing concerned for such period as the court considers appropriate in all the circumstances; 15

(b) where the court adjourns sentencing in accordance with paragraph (a), the court shall remand the convicted person in custody or on bail to the sitting of the court on the date to which that paragraph relates; 20

(c) no evidence shall be adduced by or on behalf of the convicted person in relation to that person’s character except in accordance with this section. 25

(2) A convicted person shall not adduce or cause to be adduced any evidence in relation to that person’s character in the course of sentencing for the offence concerned without the leave of the court.

(3) For the purposes of subsection (2), a person to whom subsection (1) relates shall, as early as practicable prior to sentencing, apply to the court on notice to the prosecution for leave to adduce the evidence referred to in subsection (2). 30

(4) The court shall not grant leave for the purpose of subsection (2) if it is

satisfied that the evidence concerned relates to matters concerning the convicted person's status and reputation that, in the opinion of the court, facilitated the commission of the offence concerned.

- (5) Where the court gives leave for the purposes of subsection (2)—
- (a) the complainant and the prosecution shall each be entitled to put such questions as appear relevant to any person giving evidence under such leave or to otherwise challenge such evidence and, for that purpose the complainant and the prosecution may, on application to the court, seek further information in relation to the evidence that is to be adduced, and
 - (b) for the purpose of paragraph (a), the prosecution shall, as soon as practicable after leave is given, give notice to the complainant of the nature of the evidence to be adduced in accordance with that leave and of the complainant's rights under paragraph (a).
- (6) For the purpose of subsection (5), where the complainant is deceased—
- (a) subject to subsection (7), a family member of the complainant shall be entitled to question or otherwise challenge evidence in respect of which leave has been given for the purposes of subsection (2), or to seek further information in relation to such evidence, in accordance with the provisions of subsection (5)(a), and
 - (b) for the purpose of paragraph (a), the prosecution shall, as soon as practicable after leave is given for the purposes of subsection (2), give notice to such family members of the complainant as the prosecution considers appropriate of the nature of the evidence to be adduced in accordance with that leave and of the rights of any family member of the complainant under paragraph (a).
- (7) (a) Where more than one family member of the complainant seeks to avail of the entitlement referred to in paragraph (a) of subsection (6)—
- (i) the court shall direct the family members to nominate one family member for the purpose of that paragraph, and
 - (ii) if the family members are unable to reach agreement for the purposes of subparagraph (i), the court may, having regard to the degree of relationship between the family members and complainant, nominate such family member as it considers appropriate.
- (b) Where a convicted person is a family member of the complainant, the convicted person may not avail of the entitlement referred to in subsection (6)(a) in respect of the sexual offence concerned.
- (8) The court shall not impose a sentence on a convicted person in relation to the sexual offence concerned without first being satisfied that subsection (5) or, where applicable, subsection (6) has been complied

with.

- (9) If the period between the notification of the complainant under subsection (5)(b) or, where applicable, subsection (6)(b) and sentencing is not, in the court's opinion, such as to have afforded the complainant or family member a reasonable opportunity to arrange legal representation of the kind referred to in this section, the court shall further adjourn the sentencing of the convicted person for a period that the court considers appropriate. 5
- (10) Where—
- (a) a court has given leave for the purposes of subsection (2), and 10
- (b) it appears to the court that any evidence adduced or proposed to be adduced in reliance of leave given for the purposes of subsection (2) is not or may not be such as may properly be adduced or made in accordance with that leave,
- then the court may direct that any question concerned shall not be asked or, if asked, shall not be answered, that any statement concerned shall not be admitted or that any submission concerned shall not be made except in accordance with leave given on a fresh application under this section. 15
- (11) Where a court gives leave for the purposes of subsection (2) any evidence proposed to be adduced in accordance with that leave shall be adduced— 20
- (a) by oral evidence given on oath,
- (b) by way of affidavit, or
- (c) by way of written evidence that is accompanied by a statutory declaration that to the best of the knowledge and belief of the person concerned, the written evidence is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the evidence concerned. 25
- (12) Subsection (11) is without prejudice to the right of a convicted person, on that person's own behalf or through that person's counsel or solicitor, to make unsworn statements to the court by way of mitigation before the court passes sentence in relation to the sexual offence concerned. 30
- (13) Nothing in this section authorises evidence to be adduced which cannot be adduced or made apart from this section. 35
- (14) The purpose of this section is to provide that, in view of the harm caused to society by the commission of sexual offences, a court, in imposing sentence on a convicted person for such an offence, shall fully interrogate any evidence adduced by or on behalf of the person in relation to that person's character. 40
- (15) In this section—

‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

‘civil partner’ means a person in a civil partnership or legal relationship to which section 3 of the Act of 2010 applies;

‘cohabitant’ means a cohabitant within the meaning of section 172(1) of the Act of 2010; 5

‘complainant’ means, in relation to a sexual offence, the person in respect of whom the sexual offence is committed;

‘evidence’ includes any statements admitted or submissions made by or on behalf of a person in the course of proceedings relating to the imposition of sentence on a convicted person; 10

‘family member’, in relation to a complainant, means—

- (a) a spouse, civil partner or cohabitant of the complainant,
- (b) a child or step-child of the complainant,
- (c) a parent or grandparent of the complainant, 15
- (d) a brother, sister, half brother or half sister of the complainant,
- (e) a grandchild of the complainant,
- (f) an aunt, uncle, nephew or niece of the complainant, and
- (g) any other person—
 - (i) who was dependent on the complainant, or 20
 - (ii) who a court considers had a sufficiently close connection with that person as to warrant the person being treated as a family member;

‘sentencing’ means proceedings for the purposes of imposing a sentence on a convicted person for a sexual offence; 25

‘sexual offence’ means—

- (a) an offence that is a sexual offence within the meaning of the Criminal Evidence Act 1992,
- (b) an offence consisting of attempting to commit an offence referred to in paragraph (a), 30
- (c) an offence consisting of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in paragraph (a) or (b), or
- (d) an offence consisting of conspiracy to commit an offence referred to in paragraph (a), (b) or (c). 35

Provisions in relation to evidence in response to evidence referred to in section 5C

5D. (1) Where a convicted person adduces or causes to be adduced any

evidence in relation to that person's own character in accordance with leave given under section 5C(2), the following provisions shall apply:

- (a) the prosecution may adduce or cause to be adduced such evidence as the court considers relevant relating to the convicted person's character in response to the evidence adduced by or on behalf of the convicted person; 5
 - (b) for the purposes of paragraph (a), the prosecution may call any person that appears relevant as a witness for the purposes of sentencing and ask the person concerned such questions relating to the character of the convicted person as appears relevant. 10
- (2) Subsection (1) is without prejudice to any other enactment or rule of law relating to the discretion of the court to admit evidence relating to the character of a person who is convicted of an offence in proceedings for the purpose of imposing a sentence in relation to that offence on the person. 15
- (3) In this section, 'convicted person', 'evidence' and 'sentencing' have the meanings they respectively have in section 5C.'.

Short title and commencement

- 2. (1) This Act may be cited as the Criminal Justice (Amendment) Act 2022.
- (2) This Act comes into operation 30 days after the date of its passing. 20

BILLE

(mar a ritheadh ag Seanad Éireann)

dá ngairtear

Acht do leasú an Achta um Cheartas Coiriúil, 1993, do leasú an Achta um Chúnamh Dlíthiúil Sibhialta, 1995 agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ritheadh ag Seanad Éireann,

1 Nollaig, 2022

BILL

(as passed by Seanad Éireann)

entitled

An Act to amend the Criminal Justice Act 1993, to amend the Civil Legal Aid Act 1995 and to provide for related matters.

Passed by Seanad Éireann,

1st December, 2022

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8, D08 XAO6.
Teil: 046 942 3100
r-phost: publications@opw.ie
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
MOUNTSHANNON ROAD, KILMAINHAM,
DUBLIN, D08 XAO6.
Tel: 046 942 3100
Email: publications@opw.ie
or through any bookseller.

€1.27

