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Victims and the law

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This section gives a summary of the law in relation to victims of crime.

Introduction

The court may call a victim as a witness in a criminal case. However, the victim is not a party to the criminal case and is not usually legally represented. It is the State that takes the case.

Nevertheless, some parts of the law apply directly to victims. We outline the relevant parts of the law in the sections below. The outline follows the course of a case, that is:

- the investigation stage;
- a possible charge;
- the court hearing; and
- the conviction.

After this, we give a brief account of the law on sexual and domestic violence. The section ends with an explanation of some criminal offences.

Investigation

Video evidence by children

A Garda or another trained person may make a video recording of their interview with a child under 14 years of age in investigations into whether the child has been the victim of a violent or sexual offence, or of trafficking. This recording, or parts of it, can normally be used as evidence in court. This means that the child does not have to give evidence in the courtroom. However, the child may be questioned in court about the evidence they gave in the recorded interview. This questioning can be done through a live television link, so that the child does not have to be in the courtroom.

Intimidation

It is a crime to harm or threaten someone who is helping the Garda Síochána with an investigation, or a witness, juror, or any family member of the victim. You should tell the Garda Síochána if this is happening to you.

Possible charge

Bail

A person who is charged with an offence may apply to the court for bail. Getting bail means that a person who is charged and is waiting for the trial to take place is not held in prison. A person who is charged with an offence (also known as 'the accused') is innocent until proven guilty. Therefore, the accused person can get bail, except in certain cases, for example:

- where there is a risk that the accused person will interfere with witnesses, including the victim;
- where there is a risk that the accused person will not turn up for trial; or
- where the person is accused of a serious offence and where there is a risk that the person will commit another serious offence if given bail – a serious offence is one for which the person could be sent to prison for five years or more if convicted.

If the person fails to get bail, they are sent to prison. This person can reapply for bail if their trial does not begin within four months of the first refusal of bail.

If the person gets bail, they must reappear in court at the end of the bail period and not commit any offences while on bail. The court may add other conditions to the bail – for example, the accused person may not be allowed to go to certain places or to have contact with certain people.

A Garda can apply to the court for a warrant to arrest someone on bail, if they believe that the person is about to break a condition of the bail. If given, the Garda can arrest the person and bring them to court. The court may send the person to prison.

If a person does not appear in court at the end of the bail period or breaks any other conditions of the bail, they may be arrested and brought to court, if the court orders it. The court may then send the person to prison until the trial.

Court hearing

Live television link evidence

A young person under 18 years of age may give evidence through a live television link to the court in cases involving a violent or sexual offence, or human trafficking – unless the court has a good reason not to allow television link evidence. If the court allows it, any other person may give evidence through a live television link in cases involving violent, sexual or human trafficking offences. The court may also allow television link evidence from another country. The judge and lawyers in the court do not wear a wig or a gown when television link evidence is being given in the cases mentioned above.

Where a young person under 18 years of age gives evidence by live television link in the District Court in cases involving violent, sexual or human trafficking offences, the court may allow a video recording of that evidence to be used in later court hearings.

The court may allow a person who is in fear, or who is likely to be intimidated, to give evidence through a live television link.

Legal aid in rape and sexual assault cases

The Legal Aid Board can give advice to victims of rape and other serious sexual assaults. In addition, if during a rape or other serious sexual assault case, the accused applies to the court to raise issues about your prior sexual experience, the Legal Aid Board will represent you to defend that application. These services are not means tested, and are free of charge to you (see Legal Aid Board Victims Charter, section 7).

Conviction

Victim impact report and statements

A court must take into account any impact that the crime has on the victim when deciding the sentence for violent or sexual offences. The court may get this evidence through a report. The court can ask a professional person – such as a probation officer or a member of a rape crisis centre – to prepare a written report on the crime’s impact on the victim. This ‘victim impact report’ can deal with the physical, emotional, mental, economic or sexual harm which the victim has suffered as a result of the crime. This is different to a ‘victim impact statement’.

Where the victim applies to tell the court about the effect of a sexual or violent crime on them, the court must hear that evidence. This is known as a ‘victim impact statement’. The statement can be made in person or through a legal representative.

In cases where the victim has died as a result of the crime, the court does not have to hear a statement from the family of the victim, although some judges do allow a statement at present. However, the law is being changed. It is planned that the court must hear evidence, commonly called a victim impact statement, from the family of a dead victim, or the family of a victim who cannot speak for themselves, if the family wishes to do so.

Sexual violence

In a rape or sexual assault case, the name of the victim is not made public. Only those with a direct interest in the case, and the media, can be present in court in a rape or serious sexual assault case. A parent, relation or friend can accompany the victim in the court.

Domestic violence

Many of the violent acts that take place in family homes are criminal offences. However, they are usually dealt with in the civil courts, where court orders can be given to protect the injured party. Court cases where these orders are looked for are heard in a court where only those with a direct interest in the case are present. A parent, relation or friend can accompany the victim in the court, if the judge allows it.

Court orders

The courts can grant a wide range of orders in cases involving domestic violence. These include the following types of orders:

- **a safety order** – this orders a named person not to use or threaten violence, molest or make fearful the person who has applied for the order or any other dependants, including children. It can also order the named person, if they live somewhere else, not to watch the home of the person who has applied for the order; and
- **a barring order** – this orders a named person to leave the place where the person who has applied for the order lives, and not to enter that place unless the court allows them to do so.

A safety order or a barring order can take a number of weeks to process. In urgent cases, a person can ask for the following orders:

- **an interim barring order** – this is the like a barring order, except that it takes effect immediately and lasts until the court can consider a full barring order. It is granted if there is immediate risk of major harm to the person applying for the order or to dependants, including children. The order can be granted without the person named in the order being present in the court (referred to as 'ex parte') or without notice being given to that person; and
- **a protection order** – this is like a safety order, except that it takes effect immediately and lasts until the court can consider a full safety order or barring order.

In certain cases, the Health Services Executive (HSE) can look for orders on behalf of a person.

Domestic violence offences

If a court gives a safety order, a barring order, an interim barring order or a protection order against a person – and that person does not obey the order – they have committed a criminal offence.

If a court gives a barring order or an interim barring order about a particular place – and the person named in the order does not let the person who got the order, or

any dependant child, into the place or tries to prevent them from getting in – they have committed a criminal offence.

Any person who commits one of these offences can be prosecuted in court. If they are found guilty, they can be fined or sent to prison. The court may also punish the person for being 'in contempt of court'.

Other criminal offences

The criminal law includes many different offences. This section briefly explains some of the main offences.

Theft

A theft is where a person dishonestly takes property without the permission of its owner and with the intention of never returning it.

Robbery

A robbery is where a person uses or threatens to use force while carrying out a theft.

Burglary

A burglary is where a person enters a building without permission in order to steal or do damage. Serious or 'aggravated' burglary is where the burglar has a weapon or explosive.

Assault

An assault is where a person uses force on another person, or threatens to use force, without the agreement of the other person.

Assault causing harm or causing serious harm are more serious offences.

Dangerous driving

Dangerous driving is driving that is dangerous to the public. Such cases take into account the condition of the vehicle, the place, the amount of actual traffic and the level of traffic that might be expected.

Dangerous driving causing death or causing serious bodily harm are two more serious dangerous driving offences.

Sexual offences

Sexual assault occurs when a man or a woman is indecently assaulted.

Serious or 'aggravated' sexual assault occurs when, in a sexual assault, the victim experiences serious violence, the threat of serious violence, serious injury or humiliation.

'Rape under section 4' occurs where, in a sexual assault, a penis even slightly enters the mouth or the back passage, or where an object held by another person even slightly enters the vagina.

Rape occurs where a man has unlawful sexual intercourse with a woman who at the time of the intercourse does not agree to it – in such cases, the man knows that the woman does not agree to it or does not care whether or not she agrees to it at the time of intercourse.

Murder and manslaughter

Murder occurs when a person plans to kill or cause serious injury to some person and kills the person.

Manslaughter occurs when a person kills someone but did not intend to do so. Manslaughter can also occur if the person plans to kill or cause serious injury, but is out of control because they have been provoked or mistakenly thinks that it is necessary for self-defence.

Human trafficking

Human trafficking is where a person recruits, moves, accommodates, employs or takes charge of another adult or child, to exploit them:

- for work;
- sexually; or
- to remove their organs.

If an Irish person commits one of these trafficking offences in another country, they can be brought to court in Ireland and may be convicted. If any person commits one of these offences against an Irish citizen in another country, they can be brought to court in Ireland and may be convicted.

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