SUBMISSION BY SURVIVORS

SUBMISSION IN RESPECT OF THE GENERAL SCHEME OF CRIMINAL LAW & CIVIL LAW

(MISCELLANEOUS PROVISIONS) BILL 2025

HEAD 19

For the attention of:

Alan Guidon (Clerk) and Matt Carthy (Chair)

The Oireachtas Joint Committee on Justice, Home Affairs & Migration

justice@oireachtas.ie

Authors:

Lisa Murray

Survivor-advocate, Chartered Psychologist and Postgraduate student

LLM International Human Rights Law, Irish Centre for Human Rights.

and

Paula Doyle

Survivor of rape, advocate and expert by lived experience of the Irish judicial system.

Contact:

l.murray40@universityofgalway.ie; pauladoyle16@gmail.com

Date:

26.09.2025

Contents

Executive Summary i

Introduction 1

Our understanding of General Scheme - Head 19 2

Harmful impact of disclosures 6

Concerns about Head 19 11

International Human Rights Law obligations 16

The Position of Professional Bodies 18

The position of the DPP 18

Conclusion 19

A personal account ..... - 1 -

Executive Summary

1. This submission in made in respect of the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025 [*The General Scheme*],[1] with specific reference to **Head 19**[2] and its proposed amendments to Section19A of the Criminal Evidence Act, 1992 [S.19A],[3] concerning the disclosure of a victim's counselling notes in sexual offence trials.

2. It is made by made by **victim-survivors** whose lives have been profoundly affected, not only by gender-based and sexual violence, but also by the deeply harmful practices of the justice system. The views expressed in this document are those of the individual named authors.

3. This submission contends that Head 19 of the General Scheme **perpetuates a state-sanctioned practice that inflicts** severe psychological harm on victims, erodes the **rights** of those who report sexual offences and undermines the **safety of wider society**, despite repeated calls for its abolition, by survivors, a wide range of professional bodies, and international human rights authorities.

4. This document builds upon a recent submission authored by Lisa Murray to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW),[4] and the subsequent Concluding Observations (10 July 2025) by CEDAW which explicitly called on the Irish Government to '**prohibit access to survivors' counselling notes'** in sexual offence trials.[5]

5. As outlined in this submission, CEDAW is not the only human rights authority that has called for the abolition of this practice. The Council of Europe's group of experts on preventing and combating violence against women and domestic violence (GREVIO) in its Baseline Evaluation Report on Ireland in 2023[6] has also explicitly called on the Government to prohibit the disclosure of counselling notes in sexual offence trials. In addition, the growing body of regional case law from the European Court of Human Rights (ECtHR) makes abundantly clear the obligations on States to uphold the rights of victims of domestic, sexual and gender-based violence (DSGBV) within the justice system, and to prevent practices that amount to re-victimisation.[7] It is most concerning that while the Government acknowledges that this practice causes re-victimisation,[8] it continues to legislate for it through Head 19.

---

[1] General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025.
[2] ibid, 38.
[3] Criminal Evidence Act 1992, s19A ss17.
[4] Lis Murray and others, 'Submission to the Committee on the Elimination of all forms of Discrimination against Women in advance of CEDAW's examination of Ireland's eighth periodic report (91st Session June 2025) under the UN Convention on the Elimination of all forms of Discrimination against Women.' (19 May 2025).
[5] CEDAW, 'Concluding Observations Periodic Report of Ireland (2023)' UN Doc CEDAW/C/IRL/CO/8, para 28 (d).
[6] GREVIO, Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention): Ireland GREVIO/Inf(2023)22 (14 November 2023) 7, para 117.
[7] Council of Europe, 'Action against violence against women and domestic violence - Istanbul Convention: ECtHR case law List of relevant judgments' (*Council of Europe*) < https://www.coe.int/en/web/istanbul-convention/echr-case-law > accessed 10 September 2025.
[8] Department of Justice, Home Affairs and Migration, 'Press Release: Minister Jim O'Callaghan secures government approval to progress the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025' *Gov.ie* (6 May 2025).

6. The Government's position of continuing to legislate for this practice under Head 19 appears to rest almost exclusively on the argument that the accused's **constitutional right** to a fair trial supersedes a victim's constitutional right to privacy. We assert our position clearly that we agree with the necessity to uphold the right to a fair trial of the accused. However, taking such a dangerously narrow and discriminatory approach to suggest that privacy rights are the victim's only rights under consideration in this matter, is deeply harmful. It disregards the **profound psychological harm** that this practice inflicts on victim-survivors and **neglects the broader constitutional protections and human rights of the victim** that must also be upheld. If the Government is truly committed to its Zero Tolerance strategy,[9] it must also address the psychologically harmful practices perpetrated by, and within, the justice system itself.

7. We oppose Head 19. We reject the proposal to have preliminary disclosure hearings in ALL cases where counselling notes are requested, expressing our grave concern for the **significant harm caused by preliminary trials** and the debilitating damage caused by **further delaying trials.** We object to the proposal to delete 19A section 17, thereby removing a victim-survivor's option to waive their rights to nondisclosure, insisting that a victim must endure more harm caused by trials being delayed even further, while also being denied agency to make decisions that deeply affect our lives. Most urgently, we vehemently oppose the proposal within Head 19 to retain S.19A subsections 1-16 and the continuance of the decimating practice of disclosing a victims' counselling notes in sexual offence trails and/or in pretrial disclosure hearings. It is our view that Head 19 utterly minimises the impact of preliminary disclosure trials and completely disregards the significant damage caused to victims.

8. Importantly this submission **amplifies our voices**, sharing some insights into, and lived experience of, the ways in which this practice harms victim-survivors. A deeply personal account of the impact is provided.

9. We call for a **prohibition,** of the practice of disclosing a victim's counselling notes in sexual offence trials at the request of the accused/defence.

10. This submission details our rationale in support of our position, under the following headings:

- Introduction
- Our understanding of the General Scheme Head 19
- Impact of disclosure on victim-survivors and society
- Concerns regarding Head 19
- International human rights obligations
- Position of professional bodies
- Position of the DPP
- Conclusion
- A personal account

[9] Department of Justice Home Affairs and Migration, 'Zero Tolerance - 3rd National Domestic, Sexual and Gender-Based Violence (DSGBV) Strategy' 28 June 2022.

Introduction

1. This submission in made in respect of the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025 [*The General Scheme*],[10] with specific reference to **Head 19**[11] and its proposed amendments to Section19A of the Criminal Evidence Act, 1992,[12] concerning the disclosure of counselling notes in sexual offence trials.

2. We welcome the opportunity extended by Deputy Matt Carthy,[13] Chair of the Joint Committee, for campaigners to contribute to the pre-legislative scrutiny of the General Scheme. This submission is respectfully made by victim-survivors whose lives have been profoundly affected, not only by gender-based sexual violence, but also by the practices of the justice system. Paula Doyle is a survivor of rape, with lived experience of the Irish judicial system and having her counselling notes disclosed in a rape trial. Paula has advocated extensively to ban this practice. This submission is further informed by a survivor with professional expertise and ethics as a chartered psychologist with the Psychological Society of Ireland (PSI), and framed through a human rights lens, arising from postgraduate study in international human rights law, undertaken to advocate for victims' rights within the justice system.

3. While shaped by listening to fellow survivors, the views expressed in this document are those of the individual named authors. We are not an organisation. We recognise that no singular voices can capture the full spectrum of perspectives and lived experience of our diverse community. We therefore welcome the Committee's openness to contributions, urging that it extends accessible invitations to other marginalised groups disproportionality impacted by DSGBV and this disclosure practice, ensuring that their unparalleled insights inform and strengthen this legislative process.

4. This submission focuses specifically on situations in which **the accused seeks disclosure of a victim's counselling notes for use in their defence.**

5. For now, our submission does not address circumstances in which the prosecution requests disclosure[14] in cases where the complainant voluntarily chooses to submit their own counselling notes to the prosecution. We are striving to better understand this situation and reserve the right to comment further at a later stage. Essentially, we reject the harmful practice of disclosing a victim's counselling notes against their free informed and voluntary consent and we reject the situation where the prosecution automatically requests disclosure in preparation for evidence that may be requested by the accused/defence.[15]

[10] General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025.
[11] ibid, 38.
[12] Criminal Evidence Act 1992, s19A ss17.
[13] Dail Deb 12 Jun 2025, vol 1068, no 6.
[14] Criminal Evidence Act 1992, s19A ss5.
[15] Criminal Evidence Act 1992, s19A ss3.

6. This document builds upon a recent submission authored by Lisa Murray to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW),[16] calling for an end to the harmful oppressive discriminatory practice of disclosing a victim's counselling notes in sexual offence trials, in breach of a victim-survivors right to privacy, right to access health and justice. The UN CEDAW Committee in its Concluding Observations (10 July 2025), reminded the Irish Government of its obligations under international human rights law, and explicitly called on the State to '**prohibit access to survivors' counselling notes'** in sexual offence trials.[17]

7. This submission demonstrates that Head 19 perpetuates a state-sanctioned practice that inflicts severe harm on victims, erodes the rights of those who report sexual offences and undermines the safety of wider society, despite repeated calls for its abolition, by survivors, professional bodies, and international human rights authorities.

8. It is impossible to accept the claim that the principles of a fair trial cannot be upheld without causing such psychological harm, or that the Constitution of Ireland leaves the Government no alternative but to continue to engage in this act of profound harm and in violation of victims' rights.

9. We begin our submission by conveying our understanding of the Head 19, upon which this submission is based.

Our understanding of General Scheme - Head 19

10. This section outlines our understanding of Head 19 of the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 [General Scheme] and its proposed amendments to Section 19A of the Criminal Evidence Act, 1992 [19A].

Section 19A of the Criminal Evidence Act 1992

11. Section 19A of the Criminal Evidence Act 1992,[18] provides for the 'Disclosure of Third-Party Records in Certain Trials', which according to S.19A subsection 2 refers specifically to the **disclosure of counselling notes** in criminal proceedings for a sexual offences[19]. It is notable that this legislation pertains to the release of counselling notes of victims of **sexual offences.** It is relevant in terms of harmful gendered stereotypes and rape myths, that it does not relate to other offences.

12. It is understood that S.19A was introduced in 2017, through its insertion into The Criminal Evidence Act 1992, by Section 39 of the Criminal Law (Sexual Offences) Act 2017.[20]

[16] Lisa Murray and others, 'Submission to the Committee on the Elimination of all forms of Discrimination against Women in advance of CEDAW's examination of Ireland's eighth periodic report (91st Session June 2025) under the UN Convention on the Elimination of all forms of Discrimination against Women.' (19 May 2025).
[17] CEDAW, 'Concluding Observations Periodic Report of Ireland (2023)' UN Doc CEDAW/C/IRL/CO/8, para 28 (d).
[18] Criminal Evidence Act 1992, s19A.
[19] ibid s19A ss2.
[20] Criminal Law (Sexual Offences) Act 2017 ss39.

13. As noted, this submission addresses the specific circumstances outlined in S19A subsection 3 when the **accused requests disclosure** of a complainant's counselling notes:

> [The] accused who seeks disclosure of the content of a counselling record may make an application ("disclosure application"), in writing, to the court.[21]

14. As stated, we oppose a practice whereby the **prosecution** automatically requests that the victim discloses their counselling records in preparation for circumstances where the accused may request disclosure. We cannot source a subsection that permits this. We note the situation outlined in S.19A subsection 5 in which the prosecution requests disclosure. It is not fully clear to us whether this refers to a situation whereby the prosecution initiates this disclosure request or whether it is response to the victim's expressed wish to disclose their notes, or if it is with or against the victims free, voluntary and informed consent. We reserve our right to comment further on this subsection at a later stage:

> [The] prosecutor may make a disclosure application in writing to the court. [22]

15. S.19A subsection 3b notes that the accused must state the **reasons** for requesting the disclosure and in terms of its **relevance** to the trail:

> [The application must state] the reasons grounding the application, including grounds relied on to establish that the record is likely to be relevant to an issue at trial.[23]

16. S.19A subsection 8 outlines the disclosure regime in respect of counselling records, asserting that a **pretrial hearing** will be held to determine if counselling notes content would be disclosed:

> The court shall hold a hearing to determine whether the content of the counselling record should be disclosed to the accused and the person who has possession or control of the counselling record shall produce the counselling record at the hearing for examination by the court.[24]

17. S.19A subsection 10 identifies the **range of factors** that the court should consider, when determining whether the disclosure of counselling notes was necessary.

18. This includes factors relating to the integrity of the trial and **the accused's defence** including:

> the extent to which the record is **necessary** for the accused to defend the charges against him;[25]
>
> the **probative value** of the record;[26]
>
> the effect of the determination on the **integrity** of the trial process.[27]

19. This subsection also outlines factors of relevance to the **complainant** – including the right to privacy and the likelihood that harm will be caused:

---

[21] Criminal Evidence Act 1992, s19A ss3.
[22] Criminal Evidence Act 1992, s19A ss5.
[23] ibid s19A ss3(b).
[24] ibid s19A ss8.
[25] ibid s19A ss10a.
[26] ibid s19A ss10b.
[27] ibid s19A ss10g.

the reasonable **expectation of privacy** with respect to the record;[28]

the potential prejudice to the **right to privacy** of **any person** to whom the record relates;[29]

the likelihood that disclosing, or requiring the disclosure of, the record will cause **harm to the complainant** including the nature and extent of that harm'.[30]

20. S.19A subsection 10 also identifies factors relating to **public interest**:

the **public interest** in **encouraging the reporting o**f sexual offences;[31]

the **public interest** in encouraging complainants of sexual offences to seek **counselling.**[32]

21. 19A subsection 11b refers to a **fair trial**, or more specifically to the requirement to avoid risking an unfair trial, by not disclosing certain counselling notes that should be disclosed:

The court shall order disclosure of the content of the counselling record to the accused where there would be a real **risk of an unfair trial in the absence of such disclosure**.[33]

22. The complainant's **right to privacy** is referred to again in subsection 12(a), and it outlines the conditions that may be imposed to protect the right to privacy:

Where an order is made pursuant to subsection (11), in the interests of justice and to protect the right to privacy of any person to whom the counselling record relates, the court may impose any condition it considers necessary on the disclosure of the record.[34]

23. As stated in S.19A subsection 17, the disclosure hearing does not take place if a complainant **waives their right to nondisclosure**, thereby agreeing to release their records to the defence and accused:

This section [19A] does not apply where a complainant or witness has expressly waived his or her right to non-disclosure of a counselling record without leave of the court.[35]

Head 19 of the General Scheme

24. This section outlines our understanding of Head 19 of the **General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025** [*The General Scheme*].[36]

25. Head 19 proposes the retention of Section 19A, subsections (1) – (16), thereby allowing for the **continued disclosure of counselling notes in sexual offence trials**.

[28] ibid s19A ss10c.
[29] ibid s19A ss10h.
[30] ibid s19A ss10.
[31] Criminal Evidence Act 1992, s19A ss10(f).
[32] ibid s19A ss10(f).
[33] ibid s19A ss11(b).
[34] ibid s19A ss12(a).
[35] ibid s19A ss17.
[36] General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025.

26. However, Head 19 proposes the deletion of **subsection (17)**, thereby removing the complainant's option to **waive the right to non-disclosure**. As a result, a pre-trial disclosure hearing would occur automatically.

27. In a Government press release 6 May 2025,[37] the Minister for Justice, Jim O'Callaghan, spoke about a number of matters in relation to Head 19. The Minister noted that the 2017 amendment pertaining to the disclosure of notes **had not operated as intended**:

> The law in this area was substantially reformed in 2017 by introducing a new process whereby the court would decide at a pre-trial disclosure hearing if counselling notes are materially relevant and should be released to the defence. This has not operated as intended.[38]

28. The Minister suggested the waiver was the main reason for 19A not operating as intended, proposing that the removal of the waiver under Head 19 would provide a solution, so that **a disclosure hearing would take place in *all* cases**, placing those cases under the protection of a pre trail:

> The solution proposed is to delete subsection (17), meaning that a judicial examination of the counselling records and subsequent disclosure hearing will automatically take place wherever such records are sought by the accused. This will allow the full protections of section 19A to apply in the balanced and equitable manner originally intended.[39]

29. In this press release, the Minister spoke of the difficulty of disclosure hearings while simultaneously calling for a disclosure hearing in **all** cases:

> I recognise that disclosure hearings can be **extremely difficult** for complainants.[40]
>
> A judicial examination of the counselling records and subsequent disclosure hearing will **automatically take place** wherever such records are sought by the accused.[41]

30. It is understood that the Government's justification for the harmful disclosure of a victims' counselling notes in sexual offence trials is to uphold the constitutional rights of the accused:

> In a criminal trial, all relevant evidence must be disclosed to the defence. The Supreme Court has held that "the prosecution are under a duty to disclose to the defence any material which may be relevant to the case, which could either help the defence or damage the prosecution, and that if there is such material which is in their possession, they are under a constitutional duty to make that available to the defence". Therefore, the general rules of disclosure cover the release of counselling notes.[42]

31. Head 19 in its notes, claims that by having disclosure hearings in all trials, it balances **the privacy rights of the victim-survivor** and the **right of the accused to a fair trial**:

---

[37] Department of Justice, Home Affairs and Migration, 'Press Release: Minister Jim O'Callaghan secures government approval to progress the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025' *Gov.ie* (6 May 2025).
[38] Department of Justice, Home Affairs and Migration, 'Press Release: Minister Jim O'Callaghan secures government approval to progress the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025' *Gov.ie* (6 May 2025).
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Kildare Street Written answers 29 May 2025, 562, [28562/25].

> Notes: The law on disclosure of counselling records in sexual offence cases involves a complex and highly sensitive balancing of individuals' rights. On the one hand, there is the right to personal privacy and, on the other, the right to a fair trial. Section 19A of the Criminal Evidence Act 1992 was designed to strike a balance between these two competing rights. The solution proposed is to delete subsection (17) [...].[43]

32. Based on our understanding of Head 19 and Section 19A as outlined above, we now turn to outline the harmful impact of this legislation.

Harmful impact of disclosures

33. We submit that the disclosure practice sanctioned by 19A and Head 19 causes severe harm to victim-survivors. The following section provides some of our insights into, and lived experience of, some of the ways in which this practice impacts victim-survivors.

34. Head 19 continues to allow the disclosure of counselling notes to the accused and defence in sexual offence trials, despite survivor advocates—including Paula Doyle[44], Hazel Behan[45], Niamh Ni Dhomhnaill[46] and others[47] [48] — speaking of the shattering impact of this practice and calling for its abolition. These advocates act selflessly to prevent other survivors from enduring the profound harm that they themselves experienced in court. The harrowing accounts of survivors cannot, and must not, be ignored. Head 19 does not go far enough to address the profound concerns raised by victim-survivors or to protect society from gender-based violence and sexual assault.

35. TDs have also highlighted concerns regarding this practice and its impact on victims and have represented survivors' voices in Dail Eireann debates on the matter.[49] [50]

No safe space to heal

36. Confidentiality is fundamental to the counselling process, creating the trusted space needed to disclose and explore painful experiences. The harm caused by the disclosure of counselling notes to anyone outside that space is self-evident—even when in non-adversarial contexts. Healing is undermined if private information can be shared with others.

37. There are no words to adequately describe the agony of knowing that the perpetrator of sexual violence—the very person who caused you harm—may gain access to your counselling notes, and

[43] General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025, 23
[44] Claire Byrne, '"It felt like nearly a second violation": Rape survivor Paula Doyle on the trauma of her counselling notes being used in court *RTE Today with Claire Byrne* (4 July 2024).
[45] Sinead Hussey, ' New advocacy group to support victims of sexual violence' *RTE* (25 August 2025).
[46] Niamh Ní Dhomhnaill, 'Niamh Ní Dhomhnaill: Rape Survivors' Counselling Notes should not be Weaponised' *Irish Examiner* (Ireland: 21 Feb 2025).
[47] PJ Coogan, 'Let's-stop-rape-survivor-counselling-being-used-against-them' *Cork's 96fm Opinion Line* (17 June 2025).
[48] Sarah Grace, 'Open Letter to Minister for Justice from Sarah Grace: Call for Changes to the Justice System for Sexual Violence Victims' (Dublin Rape Crisis Centre, 23 March 2021).
[49] Dail Deb 12 Jun 2025, vol 1068, no 6.
[50] Dail Dec 15 May 2025, vol 1067 No 3.

intrude so invasively upon your private world, witness the rawness of your pain, and exploit that information for their own defence in the adversarial setting of a courtroom. It is beyond cruel.

38. Sexual violence can decimate every aspect of a victims' life. It can profoundly affect your emotional wellbeing, your relationships, your sense of safety and security, your social life, hobbies, self-care, your sense of belonging in the community, your physical health, your job performance and finances and it can deeply impact your family wellbeing.

39. Safe trauma-informed counselling can provide a vital opportunity to start the healing process. For some, it is the only pathway to some form of recovery from the depraved acts of a perpetrator, particularly in a society where harmful victim shaming, victim blaming, silencing, taboo, poor understanding and damaging rape myths remain prevalent.[51] [52] It is a particularly cruel act to turn a forum of healing into a forum that inflicts further destruction on victim-survivors of crime.

40. This legislation discourages victims from engaging in therapy, as noted by survivors and by the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), and in its baseline report in respect of Ireland:

> GREVIO underscores that the obligation and practice to disclose the counselling notes of victims of violence against women **clearly constitutes a disincentive for women to come forward and seek the needed help**, thus running counter to the principles enunciated under **Article 18** of the convention.[53]

Denying access to justice and healing

41. The disclosure regime has led some survivors in our community to refuse therapy, denying those survivors vital healing, while others avoid pursuing justice to protect their recovery, denying them access to justice. Victim-survivors (who have been informed of this practice in advance of starting counselling or at the start of their justice journey) may be **forced to make the impossible choice between their health or justice.** This not only harms survivors but also reduces accountability for perpetrators, undermines safety for the survivor and the public, and erodes public trust in the justice system.

42. It is not uncommon however for victim-survivors in our community **not to be informed of this practice**, and not to be aware of it in advance of engaging counselling and/or the justice system. Those uninformed are therefore not in a position to make informed choice about their access to justice or health. It is **significantly damaging for a survivor to find out about this practice, just months prior to the trial**, after years of therapy and after years working through the justice system as a "witness", learning that what we thought we had shared in confidence is not in fact confidential and is likely going could be twisted and misused against us.

---

[51] Gwendolyn D. Anderson and others, 'The Impact of Rape Myths and Current Events on the Well-Being of Sexual Violence Survivors' (2020) *27*(9) Violence Against Women,1379.

[52] Dublin Rape Crisis Centre, 'New national survey reveals greater recognition of sexual violence & victims in Irish society but "rape myths" persisting' (DRCC, 8 April 2025) <https://www.drcc.ie/news-resources/new-national-survey-reveals-greater-recognition-of-sexual-vi/> accessed 8 April 2025.

[53] GREVIO, Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention): Ireland GREVIO/Inf(2023)22 (14 November 2023) 7, para 117.

43. There are victim-survivors who are aware of this detrimental practice but feel they have no choice but to attend counselling while awaiting a trial, as the least worst option, as it is a matter of life or death, that it is a matter of a fight for survival, or a matter of trying to find a way to function at the most basic level in life with debilitating trauma. But this legislation **denies access to a truly safe healing forum**. The safety required for healing is stripped away for victims of sexual assault and rape — a safety seemingly afforded to others attending therapy and to victims of other crimes.

44. Victim-survivors in our community talk of sharing one's painful truth in counselling but the violation of disclosure practice means we can't fully sink into healing, that we can't fully trust it. It feels like the perpetrator and defence are listening in, a controlling shadow that can feel ever present in the counselling room. Knowing that the perpetrator and his defence will be reading your words and then twisting and manipulating them to tear you asunder trying to hide the truth, his guilt. It can destroy a victim to think that their intimate thoughts shared about the impact the perpetrator's actions has had on their relationships, shared in confidence, become material for him and his defence team to exploit, and that the justice system thinks it is ok to develop laws to damage victims in this way - all because the victim reported a predator for his savage brutality.

45. Our healing is not only weaponised—what makes this worse is that the weapon is handed back to the perpetrator and it is the justice system itself, the very system we turned to for protection, that gives it to him. When counselling notes are used against a victim, it compounds the harm, allowing further wounding by the same perpetrator, and now by the justice system as well. The cruelty is magnified because it is sanctioned by the system meant to keep us safe. It is like if you were given medicine to heal from a physical assault, but you then find out that the law allows the perpetrator who assaulted you to poison your medicine. That your effort to heal is being used as a weapon against you by the very person who caused the harm in the first place.

Counselling is for healing - not evidence for the defence

46. Under Head 19 and 19A, the justice system turns counselling notes into evidence for the perpetrator and defence team to use to inflict further harm on the victim. The therapist recorded notes for therapeutic purposes to be reviewed by the same trained therapist, and to interpret such notes through a qualified therapeutic trauma lens. They were never recorded as statements of facts or as a report to be used as evidence in court. We fail to see the evidentiary value to the accused. We cannot think of one example where counselling notes would have probative value or have relevance to the defence. This is a painful invasion of the heart and mind—carried out by the very system meant to deliver justice—and granted to the perpetrator who has already so viciously violated the victim.

    Victims are left living for years under what feels like an open search warrant on our minds and souls —where any thought or feeling can be raided, against our will, by the perpetrator. It seems that the justice system gives more respect to the privacy relating to searching a property than it does to the privacy of a victim's mind.

47. Did the Government ever consider that counselling notes should not be used in the absence of interpretation by a qualified trauma informed therapist. Did the Government consider an expert report rather than notes?

Justice system reinforces the perpetrator's power

48. Sexual offences are crimes of power and control. The justice system through this disclosure practice, gives the perpetrator even more power against the victim.

49. Survivors in our community talk of having to disclose private notes, against their free will, to the perpetrator feeling like he is being gifted a legally sanctioned way to wield even more power over the victim, not only during the trial, but long before it and long after the trial has ended.

50. Under Head 19 and 19A, victims would have to wait years for a pre-disclosure hearing to learn whether, or not, their counselling notes will be used in the trial. Even if the hearing eventually rules that notes will not be disclosed, it is highly likely that the anticipation of disclosure has already caused deep harm: every therapy session is overshadowed, knowing that the perpetrator and defence could hear and manipulate your most private words. Head 19 has not accounted for this destruction.

51. During a trial and long after it, the perpetrator wields power in the access given to personal details never intended for him, such as private information about the victim's life. The exposure of counselling notes in court and the defence's cross-examination turns private healing into a public, destabilising and discrediting of the victim for the perpetrator to witness the vulnerability and terror unfold under defence tactics.

Not in support of truth or justice

52. Head 19 continues to give the defence the opportunity to use counselling disclosures to unjustly discredit and/or destabilise victims on the stand. Cross-examination based on counselling notes can force survivors to relive their most vulnerable moments in an unsafe courtroom, while their words may be manipulated or taken out of context. This practice can undermine the credibility of a reliable victim without advancing truth, justice, public safety, or a fair trial.

53. It must be considered whether this practice is about actually seeking truth and justice or about treating the victim in such a degrading and inhumane way that it provokes a less coherent response on the stand, resulting in the truthful victim looking less credible, increasing the chance of a non-conviction of a guilty party, and achieving a 'win' for the defence.

Re-victimisation

54. The Minister for Justice states an awareness of the 're-victimisation' that disclosure of counselling records can have on complainants in sexual assault trials and yet continues to legislate for it.

> I am fully aware of the distress and **re-victimisation** that disclosure of counselling records can have on complainants in sexual assault trials.

55. We point out that the proposals under Head 19 will continue to re-victimise victims. The impact of re-victimisation is deeply serious and must not be minimised.

56. As Survivors we feel that our voices are been heard in the growing body of caselaw in the European Court of Human Rights (ECtHR) where the courts affirm that States have an obligation to protect victims of sexual and gender-based violence from re-traumatisation within the justice system, and that failure to do so constitutes a violation of human rights.[54]

57. Furthermore, we feel that our voices are being heard by GREVIO, and in its baseline report in respect of Ireland which noted that the Istanbul Convention requires States to ensure that measures of support and protection should be based on:

> a **gendered understanding** of violence against women, **should aim to avoid secondary victimisation**.[55]

58. Head 19 falls far short of the international human rights standards expected. We feel that our voices are not being heard or heeded by our Government with Head 19 and 19A proposing to continue this re-victimising practice.

A second trauma

59. We agree that the disclosure of counselling notes is retraumatising. But as survivors we emphasise that it is more than secondary trauma—it is a trauma in and of itself. It is a second trauma. "Retraumatising" or "secondary" implies that the harm occurs only because the victim was already harmed, and that the practice merely re-triggers existing trauma. In reality, disclosing counselling notes is inherently harmful. The justice system must recognise that this practice constitutes both a secondary trauma and a distinct, direct second trauma. The Government must not dilute its responsibility for the psychological harm that it causes, and will continue to cause, under Head 19.

Significant psychological harm

60. The Minister for Justice noted the 'distress' caused by this practice, while simultaneously calling for its continued practice in Head 19.

61. It is most concerning that our Government describes this practice as 'distressing' – suggesting some form of temporary anguish, sorrow or pain. Furthermore, it seems that the impact is understood as being limited to the time of the trial. Such a description is a gross minimisation of the deep longer term psychological harm that this practice imposes. We contend that it reflects the government's failure to truly listen to the voices of survivors, to recognise the true extent and nature of the psychological harm imposed. It dismisses and dilutes the intensity and severity of the damage imposed by this practice. It fails to acknowledge the longevity and depths of the impact – with its harm being imposed on victims and their families long before the trial, throughout the trial and long

[54] European Court of Human Rights (ECtHR), the Council of Europe (CoE) Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the Law Faculty of the University of Oxford and the Open Council of Europe Academic Networks, 'The Converging Impact of the European Convention on Human Rights (ECHR) and the Istanbul Convention: A Scientific Dialogue Between the European Court of Human Rights and GREVIO' (Strasbourg, 18 September 2025).

[55] GREVIO, Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention): Ireland GREVIO/Inf(2023)22 (14 November 2023) 7, para 258.

afterwards. We consider that Head 19 and the continued practice 19A is not merely "distressing", it is in our view a state sanctioned gendered act of oppression.

The disclosure request process

62. As survivors we have faced inconsistent and unclear procedures regarding the disclosure practice. Head 19 provides no emphasis on victims' rights to information — including the right to be informed early that this practice exists, and in a clear manner that takes the impact of trauma into account. It does not explain how our notes may be used, the redaction process, where our notes are stored within the various justice system departments, and who in the justice system can access them. It is also unclear the extent to which survivors have been informed about the waiver and the victim's choices in that regard and if they have been fully appraised of the consequences of those choices. These gaps leave survivors even more vulnerable, uninformed with minimal control over decisions that deeply affect their lives.

63. If the Government approves Head 19, thereby sanctioning the ongoing violation practice of 19A, it is knowingly perpetuating state sanctioned gendered acts of psychological harm against those who report sexual offences. This submission calls for a full prohibition on the use of counselling notes by the accused and defence in sexual offence trials and an end to this discriminatory violation.

Concerns about Head 19

64. The following section outlines concerns that relate specifically to the details within Head 19. Concerns include the proposed removal of the waiver without full due consideration of all matters; the impact of introducing disclosure trials in ALL cases and the retention of the harmful disclosure practice despite the disproportionate violation of the victim's privacy.

Increase trial delays

11. Trial delays have long been a significant concern for victim-survivors, and we note that many of our lives have been/continue to be severely impacted and painfully placed on hold, while waiting far too many years for trial. We are gravely concerned that Head 19 will result in significantly longer delays.

12. In 2023 the Group of Experts on Action Against Violence against Women and Domestic Violence (GREVIO) highlighted their concern regarding trial delays in Ireland[56] and called on Ireland under the Istanbul Convention to:

> [...] take sustained measures to reinforce the capacity of courts that hear cases of violence against women so as to reduce delays and backlogs; [57]

[56] ibid para 117.

[57] Ibid 263 (h).

65. In a press release 6 May 2025,[58] Minister for Justice, Jim O'Callaghan, acknowledged that complainants have concerns that pre-trial hearings would cause trial delays:

> Complainants have expressed how they have felt compelled to waive the disclosure hearing because they don't want to risk a successful prosecution or delay a trial therefore their records are routinely being released.

66. The Minister proposed that a solution to this problem would be to have disclosure hearings in all cases, as proposed in the General Scheme Head 19:

> I am therefore proposing to amend the existing legislation by requiring that a disclosure hearing takes place in all cases and removing the provision that allows for this step to be waived.

67. The solution that the Minister is suggesting in response to the concern that disclosure hearings will cause trial delays is to propose that we have disclosure hearings in all cases.

68. We cannot see how this would not cause *further* delays. We cannot see how this is a solution to victims' concerns regarding trial delays. It seems that it would exacerbate the problem of court delays by creating more delays. The General Scheme Head 19, in its proposal of pre-trial disclosures in all cases, would likely serve to exacerbate the harm already being caused by trial delays.

Removal of "right to non-disclosure"

69. Section 19A (17) explicitly references a complainant's '*right to nondisclosure'*. It is noted with concern that Head 19 proposes the deletion of subsection 19A (17), thereby removing the only explicit reference there is in Section 19A to a complainant's 'right to nondisclosure'.

Removal of a victim-survivor's agency

70. The removal of the waiver option under Head 19 means that survivors who might choose to forgo a pretrial hearing to secure a speedier process, and who may not have objected to disclosure, would not be now denied that choice. This removal of agency from survivors in decisions that profoundly affect their lives represents a regressive step, undermining survivor autonomy and capacity.

The proposed solution does not fit the problem

71. The Minister for Justice has suggested that victim-survivors agree to disclose their counselling records because they are "fearful" that refusing to do so could jeopardise a successful prosecution:

> Complainants have expressed how they have **felt compelled** to waive the disclosure hearing because they don't want to risk a successful prosecution or delay a trial....

[58] Department of Justice, 'Press release: Minister Jim O'Callaghan Secures Government Approval to Progress the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025.

> [...] complainants **feel under pressure** to waive their right to non-disclosure of their counselling notes. They are **fearful** that if they do not agree to furnish the records, the prospect of a successful prosecution may be put in jeopardy.'

72. As survivors we contend that this is not a complete picture of the reasons why survivors have waived their rights. Head 19 appears to propose a solution based on an incomplete formulation of the multifaceted factors that have led survivors to waive their rights. A vital point that was not given due regard is that at the time that counselling notes are being called for, we have heard of victims having various experiences – some have been asked, or advised, and some told by Gardai or the prosecution to release their notes, without being fully informed of their rights, and without legal advice, and sometimes as if it's a matter of normal unquestioned automatic procedure.

73. The reality is much more complex than a victim's (unfounded) 'fear' or an assumption that it may cause delays. Victims in our community have often been told overtly by authorities that it WILL cause delays if they don't consent to their release. As noted above, trial delays have deep psychological consequences on victims. There is a vital need for the Government to better understand what is happening on the ground. There is a need for training of those in the justice system and to ensure that appropriate, informed and rights-based solutions are identified and implemented based on the reality. Survivors' autonomy needs to be genuinely protected.

74. As stated by GREVIO in their report on Ireland:

> 'In anticipation of an application by the defendant to disclose such notes, **the police or prosecutor often ask the victim to waive her right to privacy** regarding those specific records. GREVIO has been informed that the victim often waives this right knowing that failure to do so may prevent a prosecution from continuing or lead to the acquittal of the defendant.

Unclear proposals for limiting release

75. The Minister announced that the Government would continue to look at ways that they 'might further limit the release of records.'

76. Neither the Minister nor the General Scheme has at this point given any further specifications as to the proposed further limits. This vague assertion is deeply inadequate and denies stakeholders and victim-survivors the option of contributing our views.

77. S.19A subsection 3b notes that the accused must state the reasons grounding the application for the disclosure of counselling notes, including grounds relied on to establish that the record is likely to be relevant to an issue at trial. There is no proposal in Head 19 to indicate what reasons would be considered valid reasons to disclose counselling notes and what reasons would be deemed invalid.

Lack of clarity regarding Head 19 restrictions

78. We are unclear about key elements in the proposals of Head 19 and preliminary disclosures trials of S.19A. The absence of clarity denies us the option of contributing our views in full. We remain unclear about the following:

79. **Grounds for disclosure applications**: Under what circumstances can the defence/accused apply for disclosure?

80. **Disclosure decisions**: What conditions will result in the application being accepted and a disclosure hearing will proceed? What conditions will result in the application being denied and a disclosure hearing will not proceed? How will this scope be strengthened to ensure to avoid unnecessary pre-trial hearings causing harm to victim-survivors.

81. **Disclosure examples**: Considering the factors that the court should take into account at a hearing to determine whether counselling records should be disclosed to the accused, as outlined in S.19A (10), can the Government provide any example where the disclosure of a record:

- was necessary for the accused to defend the charges against them?
- had probative value?
- did not have reasonable expectations of privacy?
- did not have potential prejudice to the right to privacy of anyone to whom the record relates?
- encouraged the reporting of sexual offences or did not discourage it?
- encouraged complainants of sexual offences to seek counselling or did not discourage it?
- affected the integrity of the trial process?
- did not cause harm to the complainant?

We have been unable to think of a single example, hypothetical or otherwise, where privacy of counselling notes would not be expected, where a victim's privacy and that of their families would not be violated by this practice, and where serious psychological harm would not be caused. Nor can we think of an example of where disclosure might have any probative value or be necessary for the defence. Our community see this practice and how it has been used against victims as utterly dishonourable and believe it does affect the integrity of the trial and the justice system in a negative manner. It is an inhumane and degrading act against victims. It seems to us that the very practice of disclosure fails to meet the criteria set out in Section 19A ss10 from the outset. So why then is there a call for a pretrial hearing in all cases?

Fair trial v privacy rights

82. As survivor-advocates we fully support the accused/perpetrators' right to a fair trial and the necessity of balancing the right to a fair trial and the right to privacy.

83. The Minister for Justice contends that Head 19 of the General Scheme balances the privacy rights of the victim-survivor and the right of the accused to a fair trial by requiring disclosure hearings in all trials.

84. We disagree. We maintain that Head 19 does not strike a balance of rights. It does not uphold victim's privacy rights in a proportionate manner. We do not concur that disclosure of counselling notes is required to ensure a fair trial. We do not agree that a disclosure hearing is required in all cases to ensure a fair trial. We believe that the disproportionate use of counselling notes in sexual offence trials is entrenched in false assumptions that false reports are common, entrenched in rape myths, in gender stereotyping, in victim blaming, and as means to discredit and destabilise victim-

survivors on the witness stand. We do not agree that Head 19 is a solution to the issue of our privacy rights, even under the purported 'protection' of sections 1-16 of S.19A.

85. Our position is that Head 19 continues to violate our rights to privacy and disproportionately so. This is well explained in the written submission to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) 19 May 2025, where the author calls for a prohibition of the disclosure of victim-survivor counselling notes to the accused and the prosecution, in sexual offence trials.

86. We note that Head 19 seems to be driven by a concern for the accused right to a fair trial and rightfully so. **While it is imperative that we continue to ensure fair trials, we remind the Government that Ireland does not face an epidemic of fair trial violations. What we do face is an epidemic of gender-based violence (GBV),** with 1 in 2 women experiencing GBV.[59] We also face a shockingly low reporting rate of sexual offences, with 98% of victim-survivors NOT reporting to An Garda Síochána.[60] In addition, Ireland faces an alarmingly low conviction rate for sexual offences, and concern regarding Ireland judicial leniency has been highlighted by CEDAW.[61] It is imperative that legislation give substantially greater consideration to victim-survivors' rights, balancing these with the right to a fair trial, in line with victim-survivors' rights and the broader interest of public safety.

87. Head 19 proposes that every one of us who try to heal through counselling will face the harm of pre-trial disclosure, with our private and most painful thoughts revealed to the judge and the court during a judicial review and disclosure hearing to examine our confidential notes. This pre-trial, we are informed, is intended to determine whether our notes should be disclosed further to the accused, the prosecution, and the court. We contend that, in this way, Head 19 permits **a breach of privacy in *all* cases**, by allowing victim-survivors' confidential counselling notes to be disclosed and examined at the pre-trial stage. Ironically, this legislation that is proposed to protect our privacy rights results instead in an unspoken breach of privacy for all complainants in pre-trials.

88. Also, our counselling often entails explorations of the impact of the trauma on our relationships. We do not see adequate acknowledgement been given to provisions to protect the **privacy rights of others** - our family members and other close connections, who can be easily identified by association.

89. Furthermore, there is no evident protection for victim-survivors should third party notes misrepresent what was said in counselling.

90. Having outlined our concerns regarding specific provisions within Head 19, we now turn to discuss Ireland's obligations to uphold the rights of victim-survivors of GBV and how this practice is in breach our rights under international human rights law.

[59] Central Statistics Office (CSO), Sexual Violence Survey (SVS) 2022.
[60] ibid.
[61] CEDAW, 'Concluding Observations Periodic Report of Ireland (2023)' UN Doc CEDAW/C/IRL/CO/8, para 27(b).

International Human Rights Law obligations

CEDAW

91. Lisa Murray penned a written submission on the specific issue of counselling notes to CEDAW's eighth periodic review of Ireland. Attending the periodic review in Geneva (16-20 June 2025), an oral submission was made to the CEDAW Committee on 16 June.

92. The report to CEDAW, to be read in conjunction with this report, highlights the extent to which this practice violates our human rights, amounting to a failure by the Government to meet its obligations under international human rights law, specifically under the Convention on the Elimination of Discrimination Against Women (CEDAW). [62] [63] [64] [65] The report identifies our rights that are breached by this disclosure practice – including a breach of our privacy rights, our rights to access justice, our rights to access health. We highlight that it is a decimating act of gender-based harm, constituting a form of discrimination that impairs and nullifies our access to other rights and fundamental freedoms.

93. In its Concluding Observations report on Ireland (7 July 2025), the CEDAW committee concurred with our submission, and noted with concern Ireland's 'inadequate protection of survivors' privacy regarding counselling notes from therapy sessions' (CEDAW/C/IRL/CO/8, para 27d). It followed on to explicitly call on the Irish Government to '**prohibit access to survivors' counselling notes**' in sexual offence trials (CEDAW/C/IRL/CO/8, para 28d).

94. We note that the Minister's justifications for proposing Head 19 fails to mention our rights as victim-survivors to access health, to access justice, our dignity rights and our right to be free from gender-based harm in its recognition as a form of inequality and discrimination.

Istanbul Convention

95. This harmful practice was also reviewed by the *Group of Experts on Action against Violence against Women and Domestic Violence* (GREVIO) under the Istanbul Convention. On 14 November 2023, GREVIO issued Ireland's (Baseline) Evaluation Report, under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) explicitly calling on Ireland to end this practice:

[62] Convention on the Elimination of All Forms of Discrimination against Women, adopted by GA Res. 34/180 on 18 December 1979, U.N. Doc. A/34/46, entered into force 3 Sept. 1981, articles 1,2,5(a).

[63] CEDAW, 'General Recommendation No. 35 (2017) on Gender-Based violence against Women, updating General Recommendation No. 19 1992' (26 July 2017) UN Doc CEDAW/C/GC/35.

[64] United Nations Committee on the Elimination of Discrimination against Women (CEDAW), 'CEDAW Convention and the Practice of the CEDAW Committee as the basis of the International Legal Framework on Gender-Based Violence against Women and Girls' (9 - 35 October 2023).

[65] CEDAW, 'CEDAW General Recommendation No. 19: Violence against Women' (1992).

'GREVIO urges the authorities to **eliminate such a practice without delay**.[66]

'In particular, authorities should [....] **remove without delay,** including **through legislative means**, the obligation and **practice to disclose victims' counselling/therapy notes** as part of court proceedings relating to acts of violence against women.' [67]

96. GREVIO noted its concern that counselling notes were specifically sought in sexual offence trials and to question the victim's credibility:

Reports indicate that this type of evidence is **rarely sought in other types of crime** and seems to be **unique to cases of sexual offences**.[68]

Equally concerning is the requirement provided under section 39 of the 2017 Criminal Law (Sexual Offences) Act for therapists and support services to disclose in court therapy and counselling notes taken during sessions with a victim, upon request of the defence or the prosecutor, **when these pertain to allegations of rape and sexual violence**. More specifically, GREVIO notes with grave concern that counselling notes are regularly sought in court by the defendant to **question the credibility of a victim's report** to the police. [69]

European Convention on Human Rights (ECHR)

97. The European Court of Human Rights (ECtHR) and the Council of Europe Group of Experts (GREVIO), at their recent joint conference in Strasbourg on 18 September 2025, emphasised State parties' obligations towards victim-survivors of domestic, sexual, and gender-based violence (DSGBV) under Articles 2, 3, 8, and 14 of the European Convention on Human Rights (ECHR). The conference highlighted the growing body of case law in which the Court has found States in violation of the Convention for the justice system's mistreatment of DSGBV victim-survivors, including through the harmful use of gender stereotypes and secondary victimisation in court proceedings.[70]

98. It is deeply concerning that in response to parliamentary questions, the Minister for Justice stated that the 'need for disclosure is also recognised by the European Court of Human Rights'[71] while omitting to mention the range of rights of victims recognised by the same court.

In summary

99. The Government in its public discourse on this proposed legislation has not given due attention to our wide-ranging rights as victims. The Government must meet its obligations under International

[66] GREVIO, Baseline Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention): Ireland GREVIO/Inf(2023)22 (14 November 2023) 7, para 117.
[67] ibid para 119(e).
[68] Ibid.
[69] ibid.
[70] European Court of Human Rights (ECtHR), the Council of Europe (CoE) Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) the Law Faculty of the University of Oxford and the Open Council of Europe Academic Networks, 'The Converging Impact of the European Convention on Human Rights (ECHR) and the Istanbul Convention: A Scientific Dialogue Between the European Court of Human Rights and GREVIO' (Strasbourg, 18 September 2025).
[71]

human rights law (IHRL), including but not limited to the CEDAW convention, the Istanbul Convention and the European Convention of Human Rights. As is evident, Head 19 is not in keeping with standards set by IHRL and is in breach of the explicit recommendations by CEDAW and GREVIO, calling on Ireland to cease this practice. Despite such clear direction, the Irish Government continues in its proposal to legislate for this practice through Head 19 of the General Scheme. This is not acceptable.

The Position of Professional Bodies

100. A prohibition of this harmful practice has also been called for by mental health practitioners, allied health professionals, and professional bodies alike, including:

- The Psychological Society of Ireland (PSI) (1July 2025)
  Position Statement on the Use of Therapy Notes in Legal Cases involving Rape and Sexual Assault in Ireland

- The Irish Association for Counselling and Psychotherapy (IACP) (July 2025)
  Calls for the End of the Use of Therapy Notes in Legal Cases Involving Sexual Assault in Ireland

- An open letter by allied health professionals to Ministers (9 June 2025)
  Open letter to Ministers by Health Allied Health Professionals

- Irish Association of Humanistic and Integrative Psychology (IAHIP)
  IAHIP Statement on the use of Therapy Notes In Sexual Assault Court Trials

- Irish Council for Psychotherapy (ICP) (17 September 2025)
  ICP Position Statement on Psychotherapy and Counselling Notes

- Dublin Rape Crisis Centre (DRCC)
  As reported by Virgin Media News 29 May 2025, the DRCC 'called for an end to the use of victims' counselling notes in crime cases' with the Chair of DRCC, Anne Marie James aptly saying:

  > **We know the crime of rape is one of power and control, and what better front row seat can a rapist have, but to their victims' therapy notes**.

The position of the DPP

101. In a public statement, the Director of Public Prosecution (DPP) (27 March 2025) announced that the DPP office rejects the notion that counselling notes are relevant in sexual offence trials:

'My Office very much welcomes the clarity from the recent Supreme Court judgment in DPP v. WC, which **rejects the notion that disclosure of counselling notes in sexual offence cases is required on the basis that the material is remotely or potentially relevant**. I think it is important to be aware that other categories of records can also contain deeply private information - such as medical, social work, or family law records and mobile phone data.' [72]

Conclusion

102. This submission is made in respect of the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025 [*The General Scheme*],[73] with specific reference to **Head 19**[74] and its sanctioning of Section19A ss 1-16 of the Criminal Evidence Act, 1992,[75] concerning the disclosure of a victim's counselling notes in sexual offence trials at the request of the accused/defence.

103. As victim-survivors with lived experience of the justice system, **we submit our profound opposition to Head 19 and its ongoing sanctioning of 19A**.

104. **We call for legislation that eradicates the harmful practice** of disclosing a victim's counselling notes in sexual offence trials at the request of the accused/defence.[76]

105. It is our submission that if the General Scheme Head 19 is passed, the Government is knowingly:
- Continuing to perpetrate **discriminatory acts** of **psychological harm** on victim-survivors;
- Continuing to **violate the privacy rights** of victim-survivors, and disproportionately so;
- Deterring victim-survivors from seeking **counselling**;
- Deterring the reporting of sexual offences, negatively impacting **public safety**;
- Breaching Ireland's obligations under **international human rights law;**
- Continuing to violate victim-survivors human rights to access **health and justice**;
- Exacerbating the problem of **trial delays** and the consequent harm imposed on victims;
- Denying **agency** to victim-survivors who wish to waive their rights to non-disclosure.

106. We contend that the disclosure practice sanctioned by Head 19 and 19A perpetuates a state-sanctioned violation that inflicts severe and lasting **psychological harm** on victims, **erodes the rights** of those who report sexual offences, and **undermines the safety of wider society**.

107. **Survivors**, **professional bodies**, and **international human rights** authorities have repeatedly called for its abolition. Both **CEDAW**'s Concluding Observations and **GREVIO**'s Baseline Report on Ireland explicitly call on the Government to prohibit the disclosure of counselling notes in sexual offence trials. In addition, the growing body of case law from the European Court of Human Rights **(ECtHR)** makes abundantly clear the obligations on States to uphold the rights of victims of domestic, sexual and gender-based violence (DSGBV) within the justice system, and to prevent

[72] Office of the Director of Public Prosecutions (ODPP), 'Office of the DPP commemorating 50 years since the appointment of the first DPP' (ODPP Press Release) 27 March 2025, 3.
[73] General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025.
[74] ibid, 38.
[75] Criminal Evidence Act 1992, s19A ss17.
[76] Criminal Law (Prohibition of the Disclosure of Counselling Records) (Bill 15 of 2025).

practices that amount to re-victimisation. Yet the Government continues to knowingly legislate for this damaging and re-victimising practice.

108. We simply cannot accept the Government's implicit contention that the **Constitution** of our nation requires our people to tolerate systemic gender-based harm against victims in court, including re-victimisation. Nothing justifies gender-based harm. We cannot accept the claim that ending this discriminatory and deeply damaging practice would be unconstitutional, and we must accept that, particularly when it appears the Government has failed to give due consideration to the full range of victims' rights protected under our Constitution. The Government's position under Head 19 seems to rest almost exclusively on the argument that the accused's right to a fair trial supersedes a victim's right to privacy. This narrow approach ignores the profound psychological harm caused to victim-survivors and the broader constitutional protections and human rights that must also be upheld. The Government's Zero Tolerance strategy must include zero tolerance of the psychologically harmful practices perpetrated by the justice system.[77]

109. In light of our submission concerning the **disclosure of a victim's counselling notes in sexual offence trials at the request of the accused/defence**, we ask the Joint Committee, in its pre-legislative scrutiny of the General Scheme Head 19, to seek clarification from the Government on the following:

- Will the Government commit to give due consideration to the **full range of victim-survivors' rights under the Irish Constitution**, in relation to this disclosure practice, extending beyond our rights to privacy to include protections from harmful discriminatory practices and psychological harm perpetuated by the justice system?
- Will the Government heed **explicit calls** to Ireland by **Grevio** and **CEDAW** to cease this practice and meet its **obligations** under the Istanbul Convention, CEDAW and ECHR.
- Will the Government listen to and heed the **voices of victim-survivors with lived experience** and end this practice?
- Will the Government reconcile its interpretation of our **Constitution,** with Ireland's obligations under **international human rights law**, ensuring alignment with gender equality standards and that refute claims that appears to suggest that our constitution supports revictimization and gender-based violence in court?
- Will the Government commit to **ending this state-sanctioned gendered act of oppression** of disclosing victims' counselling notes at the request of the accused/defence in sexual offence trials?
- What **legislation** will the Government introduce to **ban this practice** and ensure the protection of victim-survivors' rights under both constitutional and international human rights law on this matter?

[77] Department of Justice Home Affairs and Migration, 'Zero Tolerance - 3rd National DSGBV Strategy Appendices - Zero Tolerance Appendix 1 – Glossary' 8 July 2022.

- What concrete and meaningful actions will the Government to ensure a **trauma-informed and victim-centred justice system?** What are the specifics of training to be provided across the judicial system to dispel prevailing rape myths that we believe underlie the decisions to continue the practice of disclosing counselling notes. What specific actions will be taken in terms of agreed codes of ethical conduct permitted in court to ensure that the defence in sexual offence trails are not permitted to engage in discriminatory harmful conduct and re-victimisation of the victim-survivor.

110. If the Government takes the decision to continue to breach international human rights law and to advocate for a justice system that continues to cause vicious harm to victims by legislating for the disclosure of victims' counselling notes, we ask that it states this position openly. The severely damaging impact of this practice compels us, as survivors, to continue to advocate for its prohibition—through domestic advocacy, and, through guidance from European and international human rights mechanisms.

111. We do have further points of submission, particularly regarding the balance of the constitutional right to a fair trial and to a range of victim-survivors rights, the specific judgements in relevant Irish and ECtHR case law, in addition to further submissions of lived experience accounts and other views. We look forward to being more centrally involved in the process of making written and oral contributions on the General Scheme. We ask that the Joint Committee provide updates regarding our opportunities to do so. Our objectives are to have our voices and the voices of all victim-survivors in all our diversity, heard on this important matter, a matter that so significantly impacts the lives of victim-survivors nationwide.

We thank you for this opportunity to make a submission.

SUBMISSION BY - PAULA DOYLE - SURVIVOR

SUBMISSION IN RESPECT OF THE GENERAL SCHEME OF CRIMINAL LAW & CIVIL LAW

(MISCELLANEOUS PROVISIONS) BILL 2025

HEAD 19

For the attention of:

Alan Guidon (Clerk) and Matt Carthy (Chair)

The Oireachtas Joint Committee on Justice, Home Affairs & Migration

justice@oireachtas.ie

Authors:

Paula Doyle

Survivor advocate, expert by lived experience

Contact:

pauladoyle16@gmail.com

Date:

25.09.2025

A personal account

TRIGGER WARNING

A PERSONAL ACCOUNT OF THE SEVERE HARM CAUSED BY THE DISCLOSURE OF COUNSELLING NOTES IN A RAPE TRIAL

Submission on Head 19:

This submission in made in respect of the General Scheme of Criminal Law & Civil Law (Miscellaneous Provisions) Bill 2025 [*The General Scheme*], with specific reference to **Head 19.**

Introduction:

I am a survivor of rape. I have lived experience of the Irish judicial system permitting the disclosure of my counselling notes as a victim in a rape trial to the court and to the monster who raped me. I am a survivor-advocate who has advocated extensively to ban this practice.

I am writing about my horrific personal experience of this. This is not about my case, I am sharing these personal painful insights because I want the government and legislators of Head 19 to fully understand the brutal long-term harm it causes. I want this practice to end so no victim ever has to go through what the justice system put me through when it disclosed my counselling records.

Need for counselling

At the time I entered counselling, I was not in real-life mode. My world had become trauma centered. I could not think as I once did. It takes too long. Therefore, my instinctive survival responses were quicker. The way for me to begin my healing was to fully immerse myself into a journey of therapy. I was trying and hoping by doing this, when I was my most vulnerable and when I had lost all trust in human beings, that I may return to the life myself and my family once had.

Second violation

There was no consent obtained when the attack took place when my body was taken, when the perpetrator did as they wished. Allowing the perpetrators to then allow access to my heart and mind was further detrimental to my future health and well-being. I was yet again disempowered and deprived of choice and consent. This is the second violation of a victim this time done under the supervision of the very system that is supposed to be there to protect victims.

Increase time/court delays:

My personal experience of getting to trial in this country with our present judicial system felt inhumane and incomprehensible. It took my case 2 adjournments and 4.5 yrs to get to court. Our present judicial system is already broken, unfair and at present damaging for victims. As a victim, I was not living. I was barely surviving. At times I already felt like I was the one on trial before my case even begun. It is not a victim-centred justice system and there is no chance of recovery or beginning of healing for a victim when the thread of a life as you now know it, is being put on hold, as you find you are a 'witness' in a case that has destroyed your previous existence. You are met with silences and treated so appallingly by the very Department that is supposed to be protecting you.

My counselling notes were summoned by the DPP in the January 2023, 5 months before my initial trial date. So much for confidentiality???

At this time, I had 3 yrs of private, personal and extremely distressing notes, that I had opened up to in the safety and sanctity of my therapy sessions in the hope this further pain may lead to some recovery. In what should have been my final months of preparation, in trying to gather some strength and courage pretrial, to now facing the Monster from my attack in taking more than he already has, I am asked to hand over my heart and soul.

I know because of my PTSD my brain wasn't functioning to the best of its ability but surely this wasn't right? Surely in our modern 21st centred country a personal intrusion of this kind isn't morally right?

But unfortunately, that is not the case. I couldn't agree or fathom it and so I objected, which is my right under current Irish law. Unfortunately, within the week I learned that if I objected my preliminary hearing which was set for the March 2023 would be pushed forward by 6-9 months, meaning my new court date would be probably/ maybe the middle of 2024 (which was 1.5 yrs away) at best. At present I couldn't see next week, let alone a further 1.5 yrs away. The alleged predator at the time lived locally, both mine and my family's lives could not continue in this now unforeseeable future, more delays, more obstacles because I want to protect what is mine?

I couldn't do it to them, the devasting and ripple effects this had on my loved ones was already immeasurable. I also felt I didn't know if I would still be alive in 1.5 yrs, I couldn't continue to live for much longer with this Monster living so closely so unfortunately, I had to cancel my objection and allow my notes to be taken.

The next couple of months I spent my counselling sessions, not healing but reading what had been written about my sessions, the hurt, the pain and fear. This had a detrimental effect on my mental health. I would leave the session feeling so vile and decontaminated that on return home I would cut my skin with a knife, not to end my life but hoping that if I felt the physical pain from the wounds, I would not feel so horrifically disgusting once again.

This is the mental, physical and emotional torture that our Irish Judicial System are putting victims through and cannot continue. Victims cannot object to their confidential notes being taken because it adds time that they simply haven't got.

Harming without resolution:

During counselling sessions when healing from your trauma, unfortunately a part of the process can be flashbacks. For those that haven't experienced them, a flashback is when a victim suddenly feels as if their event/ attack is happening now. To the victim they are instantly dropped back into the past and their feelings and emotions are so vivid and realistic. After my rape (trauma) my brains memory system didn't process the event normally, instead of being stored as a past memory, it intruded into my present, everyday life, warping my senses and dangerously causing havoc. It is undeniably terrifying. Loved ones, trusted family and friends can help.in the moment of a flashback to try to ground and support the victim because they know of the tools they have built up to try to ease this unimaginable and petrifying ordeal for all concerned but they cannot treat the actual flashback.

Trauma informed, mental health (especially those familiar with PTSD and sexual assault) and counsellors are qualified to ' handle' a client during a flashback. Without proper experience and training a flashback can be detrimental to a victim of sexual assault and more so with the ' alleged ' perpetrator present. A courtroom is not a safe place, with adequate support and qualified/ trained personnel present to be forcing a victim to relive their most vulnerable moments during the healing sessions of counselling.

It is barbaric, cruel and can cause such harm that it is making victims choose between their mental health and justice. My counsellor couldn't come and sit with me to protect me from myself when I gave my evidence during my trial, so I brought some tools with me that we had tried and tested during my previous flashbacks, in the hope that if it happened, I could hopefully manage.

This is at a time when I have to relive the rape in public view while being watched by the very person who committed the heinous crime.

And they say there is NO victim shaming in our beloved country of ours today? Please excuse my anger but from experience, I beg to differ.

Negative stereotypes and false allegation myths

Requests for disclosure of counselling notes rest initially on an assumption that the private, personal background of complainants of sexual assault/rape is relevant. This contrasts with victims of other crimes such as robbery or drug related charges etc. who are typically not asked to provide records. The investigation of personal background information rests solely on stereotypes about sexual assault and rape, such as false allegations, women who are mentally unstable, sex trade workers, a victim's sexual history or attempts to cover up sexual activity. There is an assumption that an examination of a victim's personal records, background, behaviour and characteristics will help those seeking them about her role in the assault.

By a victim going to counselling to try to heal themselves, they may unintentionally be providing elements that can be used in the future to discredit them as a victim by the defence.

Denying access to justice and healing:

The knowledge that counselling notes and records can potentially be assessed and used in trial results in many victims / survivors postponing essential treatment, dropping their case, or now not reporting the crime at all.

This can not continue. It is so harmful for victims. To have a victim of one of the most heinous crimes to have to make a choice… to stop their life saving counselling or for a victim to close their case to continue their life saving counselling to aid their recovery… this is so wrong on so many levels.

Are we, as victims, not entitled to healthcare?

Are we not entitled to heal?

Are we not entitled to privacy instead of our innermost thoughts laid out bare for all to hear, and see?

We seem to have no rights in society once we have been violated and become witnesses.

It seems we are then open to the perverse, cruel, damaging and outdated laws within our Irish judicial system to be violated for a second time.

Where is the justice in that?

No safe space to heal:

For a victim, there is no chance of healing and recovery when the thread of your now existence is met with obstacles, adjournments, excuses, silences, and personal intrusions.

When I speak of personal intrusions, I talk about my counselling notes. My private counselling notes were requested by the DPP in preparation for trial, before the defence had even or ever requested them.

These are my private, confidential, extremely distressing counselling notes to be read and scrutinised by both prosecuting and defensive teams for any shred of evidence that can be used against me, victim of rape, and thirdly by the suspect as well.

The 'alleged perpetrator 'at the time took my body that night, invaded it, did what he wanted with it and when he was finished, left it there like a piece of rubbish in the hedges. He had no consent that night, but he took my body anyway. How perverse is it that he now gets to take my heart and mind, my inner most deepest thoughts, my soul.

Strangely he also doesn't need permission for this as our government, our judicial system gave their consent.

I cannot properly put into words, still to this day, just how torturous this law is.

It is a second violation but on a deeper level as this time it's done by the Courts of Justice. Can a victim not hold onto one minimalistic piece of themselves?

Has the perpetrator not taken enough already?

I did object but as I said previously, I was barely surviving. As I told Minister O Callaghan when I met him in May 2025, I did object but to follow through on that I had to take on the system that was supposed to protect victims. I wasn't strong enough then; I hadn't the strength to fight a system where I was supposed to be protected as a victim of one of the most heinous crimes.

It felt like not only the perpetrator, but EVERYONE wanted a piece of me. It didn't matter how they got it or what damage they did on the way. I was distraught and sickened. I had never opened up and talked to anyone about my counselling sessions, my best friend, my partner .... they were private. They were distressing, triggering sessions but had to be done to benefit my healing. I had nothing to hide but wanted them kept private, as they should be and I didn't want HIM to see how he had truly damaged me, to see how much he had broken my relationship with my partner, to see how much he had hurt my beautiful children, my relationship with them and that because of his attack I had tried to take my own life 3 times. He got to read that.

I can now call my attacker a Rapist as that's what he was found guilty of.

I am not healed because of a guilty verdict, I will live with this trauma for the rest of my life, I received a life sentence on the 6th of September 2019.

The rest of my and my family's trauma is down to the harrowing and damaging experience of the Irish legal system and their laws that protect perpetrators and grossly retraumatize victims.

I CALL ON THE GOVERNMENT TO PROHIBIT THIS PRACTICE NOW

STOP DAMAGING LIVES OF VICTIM-SURVIVORS