ONE IN FOUR
Ending the trauma of childhood sexual abuse

Submission to the Joint Committee on Justice, Home Affairs and Migration
General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025
Head 19: Amendment of Section 19A of the Criminal Evidence Act 1992
Submitted by: One in Four

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1. Introduction

At One in Four, our mission is to end the trauma of child sexual abuse in Ireland. Founded over 20 years ago, we have worked persistently to break the silence and destigmatise the shame surrounding what remains a taboo topic. As the first charity of its kind in Ireland, we set out to build expert services to address the complex and diverse needs of all clients, individually. As a result, we have developed responsive and tailored services which have yielded positive outcomes for thousands of men and women.

We offer a comprehensive, wrap-around service model designed to support survivors of childhood sexual abuse. Our approach integrates multiple services including therapy and advocacy to ensure our response to the impact is coordinated and addresses diverse needs. We also provide a therapeutic intervention programme for people who have sexually offended as a core child protection measure. In 2023, we delivered 6,562 therapy and advocacy sessions to 856 individuals.

The One in Four Advocacy service provides specialised support through the legal process, predominantly the criminal justice process. Our team works directly with survivors on a daily basis, accompanying them to court, supporting them during Garda interviews, and assisting with all stages of the legal process—including section 19A hearings. The Advocacy service is staffed by highly trained professionals who understand the impact of trauma and how it gets re-activated in the system. In 2024, our Advocacy service provided ongoing support to 344 individuals engaged in the criminal justice process.

In 2021, One in Four completed an empirical study into the experiences of sexual crime complainants in the criminal justice system in Ireland, entitled *The Victim Experience in Focus*. The aim of this research was to amplify the voices and experiences of survivor participants who had been through the criminal justice process in order to influence

Irish legislation, public policy, and practice for future survivor stakeholders in the criminal justice and child protection systems. The quotes in this submission are from this research.

2. Power Dynamics in the Justice System

From our work, we know that survivors of childhood sexual abuse who engage with the criminal justice system do so from a position of profound vulnerability. Many have carried the trauma of their experience for years, often in silence and isolation. The decision to come forward and report abuse is shaped by fear, shame, concern for others, and a deep mistrust of authorities that have historically failed them.
As one survivor in The Victim Experience in Focus put it:

> *"I was saying I'm never and I'm taking this to the grave, I was just protecting my mam, I was like no, her life would be ruined, devastated for her."*

The power dynamics at play in the criminal justice process are significant. Survivors often feel powerless, both in relation to their abuser and in navigating the justice system. The process of reporting, making statements, and attending court can re-victimise survivors, reinforcing feelings of being unheard, dismissed, or treated as a mere witness rather than the central figure in their own story.

Another added:

> *"I felt very dismissed and felt that my experience of what was going on that I didn't matter again… it just kind of felt that they are the law and they can do what they want."*

The legal environment often mirrors the power and authority dynamics of the persons' past experiences of sexual abuse; they become distressed and can only respond in the same way as they did to the original trauma. This dynamic compounds the trauma survivors have already endured, deepening their sense of vulnerability and distress.

3. Routine Disclosure Requests and Their Impact

It is standard practice for the defence in sexual offence trials to request access to a wide range of personal records, including counselling, medical, and psychiatric records. These requests can feel invasive and intimidating to complainants, who may not fully understand the implications of consenting to such disclosures.

As one survivor in The Victim Experience in Focus explained:

> *"I just felt very fucking exposed, do you know what I mean? I was already pretty exposed. I just felt a bit violated, I felt like it was a violation. I felt like they shouldn't have the right to have things like our counselling notes. Actual intimate information if that makes any sense?*

Maybe that's not the right word but you know, really personal information. I just felt like it wasn't appropriate. Especially the fact that he had admitted to some stuff. So they knew that I was definitely telling some sort of truth and yet they still had to hand over. So they knew I was abused at some way, shape or form, and they still handed over my notes. You don't know what the counsellor's notes are. They could be quoting you, they could be saying anything, you don't know. I mean I know from talking to different counsellors that they all take different types of notes… So you just don't know what they're writing."

Another survivor added:

"…victim is made or convinced to give consent to release of their own counselling session notes etc. which we all think is private and confidential in the counselling session, but no whatever is said in the sessions can be used in court cases which I don't agree with because we already have trust issues so counselling is supposed to be a safe place to talk in private not public."

In our experience, complainants are routinely asked to sign the waiver at the early stages of the garda investigation, often when making a statement. There is very little awareness on the part of investigators of the implications for survivors. This situation often leads survivors to signing the waiver without fully understanding the implications; that their personal records may be used against them in cross-examination or that they have a genuine right to refuse disclosure.

4. Ideal World: Absolute Privilege for Counselling Notes

In an ideal world, counselling notes would be absolutely privileged, never subject to disclosure, and thereby recognising the deeply personal and sensitive nature of therapeutic conversations and the role of confidentiality in supporting survivors of sexual abuse.
However, we recognise that the criminal justice system must balance the rights of the accused to a fair trial with the rights of survivors to privacy and protection from re-victimisation.

5. Recent Supreme Court Judgment: Clarity and Protections

One in Four welcomes the recent Supreme Court judgment in *A.M. v DPP* [2025] IESC 16. The Court's findings affirm the importance of safeguarding survivors' privacy and

dignity throughout the criminal justice process, particularly regarding the disclosure of counselling records. Supreme Court judgment in *A.M. v DPP* [2025] IESC 16, highlights the fact that survivors are frequently asked to consent to disclosure before they have seen the records or had the opportunity to obtain independent legal advice. This process is not truly informed or voluntary. As set out in the judgment, C was asked to give her consent to the further disclosure without first having had sight of the proposed disclosure. The Court stated: 'Any waiver of that right pursuant to s.19A(17) must be fully informed.'" (A.M. v DPP [2025] IESC 16, para. 84)

6. Higher Threshold for Disclosure

The Supreme Court has established that there is a higher threshold for disclosure than mere relevance. Before counselling records can be disclosed to the defence, the defence must demonstrate a compelling basis that the records are likely to be of real forensic value to the accused. The judgment is clear: general assertions that records may contain useful information are not enough. The defence must engage with the specific facts of the case and show why disclosure is necessary for a fair trial.

As the Supreme Court stated:

"...what is clear is that some compelling basis must be established for disclosure to be directed, involving a showing that the records are likely to be of real forensic value to the accused defence. That may require the defence to engage with the prosecution case. Generalised assertions of the possibility that such records may contain something of interest to the defence will not suffice." (A.M. v DPP [2025] IESC 16, para. 76)

7. Waiver of Right to a Disclosure Hearing

The Supreme Court emphasised in paragraph 79 that complainants must be given the opportunity to examine their records and receive independent legal advice before being asked to consent to disclosure of those records to the defence. This would assist in ensuring that any waiver is truly informed and voluntary, and that survivors are not pressured into making decisions that could impact their privacy and wellbeing.

8. Use of Disclosed Information in Court

The Supreme Court also addressed how information from counselling records should be used in court, and this is to be welcomed. The judgment makes clear that the defence has no legal right to obtain counselling records without the survivor's knowledge of their contents, nor to confront the survivor with such information for the first time in cross-examination.

The Court noted:

''Section 19A regime effectively excludes any defence entitlement to conduct a surprise cross-examination of complainants in sexual offence cases by reference to their counselling records in much the same way as section 4 of the Criminal Law (Rape) Act

1981 precludes surprise cross-examination of a complainant by reference to prior sexual history and, if properly operated, the Section 19A regime also makes remote any real possibility of that happening in practice.'' ." (A.M. v DPP [2025] IESC 16, para. 93)

Looking ahead

It is likely that the Supreme Court judgment will lead to significant changes in how requests for counselling records are managed by both the prosecution and defence. While it remains to be seen how these changes will be implemented in practice, there should be fewer requests for counselling records unless a clear and compelling forensic justification is demonstrated.

At the same time, there may be an increase in judicial hearings under Section 19A, where the necessity and proportionality of disclosure will be carefully scrutinised. This shift will place new demands on survivors, the legal system and on service providers like One in Four, but it also offers an opportunity to strengthen protections for survivors' privacy within the criminal justice process.

9. The Need to Extend Section 19A Protections to All Personal Records

Currently, Section 19A applies only to counselling records. This leaves other personal records—such as medical, psychiatric, and social work files—vulnerable to disclosure without judicial oversight. Especially in the case of childhood sexual abuse, people often do not come forward to report until much later in life, and may have accumulated significant medical and psychiatric records documenting the long-term impact of the abuse

The Supreme Court judgment acknowledges that other personal records (medical, psychiatric, social work) can be equally sensitive and problematic. While the Court notes that judges can regulate access under general law, One in Four believes this approach is too uncertain and does not guarantee uniform protection. We recommend Section 19A be expanded to cover all personal records, sending a clear message that such material should only be part of trials when absolutely necessary.

From One in Four's perspective, the current law creates an unnecessary and illogical distinction between different types of records, even within the same organisation. For example, if a survivor receives both therapy and advocacy support from One in Four, the notes kept by our therapists are protected under Section 19A as 'counselling records'. However, the notes kept for the same client by our advocacy case managers—which may be just as detailed, sensitive, and personal—are not covered by Section 19A and are therefore at risk of disclosure without the same judicial safeguards. This inconsistency undermines survivors' privacy and creates confusion for both service providers, service users and the courts.

As highlighted by Dr. Susan Leahy's research (*The Realities of Rape Trials in Ireland*, University of Limerick, 2021) and the O'Malley Review (*Review of Protections for Vulnerable Witnesses*, 2020), this creates a significant gap in protection. If the defence does not find what they are seeking in counselling notes, they may seek access to other types of personal records, exposing survivors to repeated intrusions into their privacy.

Extending the protections of Section 19A to all personal records is essential to ensure that survivors are not subjected to unwarranted scrutiny and that their privacy rights are upheld consistently.

10. Admissibility of Counselling Records

While current law establishes a process for the disclosure of counselling records, it does not clearly separate or regulate the admissibility of these records as evidence at trial. Dr. Susan Leahy's research highlights that counselling notes are not reliable records of fact and their use at trial can be deeply intrusive for survivors. Extending judicial oversight to cover both disclosure and admissibility would ensure that survivors' privacy is better protected throughout the legal process.

Canadian law requires a rigorous, two-stage process for the disclosure and admissibility of personal records in sexual offence trials, with strict judicial oversight and clear protections for complainants' privacy and dignity, while respecting the accused's right to a fair trial. This approach, as recommended by Dr. Leahy and the O'Malley Review, would offer a robust framework for securing survivors' rights in Ireland.

11. The Impact of Additional Court Proceedings on Survivors

The emotional toll of court processes is significant. Survivors report feeling intimidated by the formality of the court, the presence of legal professionals, and the proximity of the accused. The environment can activate traumatic stress and reinforce feelings of powerlessness.

"But I just remember sitting there and having him behind me, and you just have that kind of, 'oh my god, it's not even done now, this is the man that's done all this to me and you are not even…you aren't putting me face to face that I can say to him'. He still is kind of nearly behind you, towering over you again still. And that was kind of quite hard."

"…you are going in here completely blind as to what's going on with all these very high powered and majority of them are men."

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12. Additional Legal Procedures

The requirement to attend court or participate in hearings about the disclosure of

personal records adds to the emotional burden, trauma, and may deter individuals from seeking justice. If the waiver provision is removed, survivors will be required to participate in additional court hearings. While judicial oversight is welcome, it is important to recognise the cumulative impact of legal procedures on survivors. Each additional step in the process—from reporting to investigative interviews, to disclosure hearings, to trial—can be deeply distressing and re-traumatising.

13. Risk of Deterrence

There is a real risk that survivors who have sought counselling may be discouraged from reporting abuse if they know they will have to endure additional legal proceedings. Conversely, if survivors want to report abuse, they may be discouraged from seeking counselling if they fear that their records will be subject to court scrutiny. This is something we regularly encounter in our services. As the Supreme Court observed, the law may deter victims from seeking counselling or reporting, which is a matter of the utmost concern." (A.M. v DPP [2025] IESC 16, para. 64)

14. Assessing the Robustness of Section 19A After Waiver Removal

With the proposed removal of the waiver provision, it is important to consider whether Section 19A will be sufficiently robust to ensure that disclosure occurs only when absolutely necessary. The Supreme Court has set a high threshold, but the law must be clear and explicit in its requirements. Judges must be required to apply strict criteria, informed by the Court's emphasis on "real forensic value" and the need to avoid "generalised assertions" by the defence.

Criteria for Assessing Genuine Necessity of Disclosure

In light of the Supreme Court's judgment, it is essential to establish clear criteria for assessing whether a disclosure of personal records is genuinely necessary. These should include:

- **Relevance to the issues at trial:** The defence must demonstrate a clear link between the records sought and the specific facts in dispute.
- **Forensic value:** There must be a compelling basis to believe that the records are likely to contain information of real forensic value to the defence.
- **Proportionality:** The potential harm to the survivor's privacy and dignity must be weighed against the need for disclosure.
- **Survivor representation:** Survivors must have access to independent legal advice and advocacy throughout the process.

These criteria should be explicitly set out in legislation and guidance to ensure consistent and fair application.

15. Resources

The removal of the waiver provision under Section 19A will necessitate mandatory judicial hearings for all disclosure requests, increasing demands on court time and resources. While this reform strengthens protections for survivors, its effectiveness hinges on sufficient resourcing to prevent delays that could compound trauma for survivors and undermine defendants' right to a timely trial. Failure to allocate dedicated resources risks creating further backlogs in an already stretched system.

15. Conclusion

The criminal justice system must do more to protect and support survivors of childhood sexual abuse. While judicial oversight is important, survivors must not be denied agency in decisions affecting their own lives. The process of disclosure and court attendance must be made less burdensome with robust support and clear protections for all personal records. As the Supreme Court has recognised, the rights of victims—including the right to privacy, dignity, and personal integrity—must be balanced with the rights of the accused, but neither right should be defined in such a way as to negate the other. The removal of the waiver provision, while intended to protect survivors from pressure, must be carefully considered so as not to further disempower those who have already experienced profound loss of control, and lengthen an already arduous and traumatic legal process. There is a real risk that the exposure of private information in criminal trials is deterring people from accessing the help they need, or preventing them from seeking justice at all.

16. Recommendations

One in Four recommends:

- **Extend Section 19A protections to all personal records, including medical, psychiatric, and social work files.**
- **Ensure that survivors have access to independent legal advice and advocacy throughout the disclosure process.**
- **Establish clear statutory criteria for disclosure, based on relevance, forensic value, and proportionality.**
- **The law be amended to require a two-stage process for the disclosure and admissibility of personal records in sexual offence trials, with strict judicial oversight at both stages, to ensure that survivors' privacy is protected and to prevent the misuse of sensitive records in court.**
- **Ensure adequate resources should be allocated to manage the impact of the anticipated rise in Section 19A hearings.**
- **Monitor and review the impact of reforms on survivors' experiences and access to justice.**

References

- *A.M. v DPP* [2025] IESC 16
- Leahy, S. (2021). *The Realities of Rape Trials in Ireland: Perspectives from Practice*. University of Limerick.
- *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (O'Malley Review, 2020)
- *The Victim Experience in Focus* (One in Four, 2021)