DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, GNÓTHAÍ BAILE AGUS IMIRCE

JOINT COMMITTEE ON JUSTICE, HOME AFFAIRS AND MIGRATION

Dé Máirt, 30 Meán Fómhair 2025

Tuesday, 30 September 2025

Tháinig an Comhchoiste le chéile ag 3 p.m.

The Joint Committee met at 3 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	**Seanadóirí / Senators**
Tom Brabazon,	Shane Curley,*
Paula Butterly,	Garret Kelleher,
Michael Cahill,	Anne Rabbitte.
Gary Gannon,	
Pádraig O'Sullivan,	
Mark Ward.	

* In éagmais / In the absence of Senator Robbie Gallagher.

I láthair / In attendance: Deputy Ruth Coppinger.

Teachta / Deputy Matt Carthy sa Chathaoir / in the Chair.

General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025: Discussion

An Cathaoirleach: We have received apologies from Deputy Kelly and Senators Ruane, McDowell and Gallagher. Senator Curley is attending in substitution for Senator Gallagher. I remind members to turn off their mobile phones or switch them to flight mode because they can interfere with the sound system and make life difficult for parliamentary reporters.

The purpose of our meeting today is to have an engagement with a number of stakeholders as part of the committee's scrutiny of the general scheme of the criminal law and civil law (miscellaneous provisions) Bill 2025. As has been noted by a number of members, including some who have corresponded with the committee, the remit of this legislation is quite extensive. It is proving difficult for this committee to deal with so many disparate measures in one item of justice legislation. I apologise to all of those who have a sincere interest in this legislation or in particular aspects of it. I note that the Public Gallery is full today and that a number of campaigners have a particular with head 19, which deals with the issue of counselling notes, a matter of keen public interest. We are joined today by Deputy Coppinger, who has brought forward stand-alone legislation in this regard. I am sure we would agree that whatever anybody's position on this, the issue itself merits separate legislation to allow committees like this to be able to deal with it properly.

Notwithstanding any of that, I welcome all of our guests to the meeting. From the Irish Penal Reform Trust we are joined by Ms Saoirse Brady and Ms Niamh McCormack. We are also joined by Ms Hazel Behan, campaigner; Dr. Susan Leahy, associate professor in law and director of the centre for crime, justice and victim studies in University of Limerick; Ms Deirdre Kenny, CEO of One in Four Ireland; Ms Aoife O'Leary, chair of the criminal state bar committee of the Bar of Ireland, and Mr. Michael Hourigan, chair of the professional practices committee of the Bar of Ireland; Mr. Liam Herrick, chief commissioner of the Irish Human Rights and Equality Commission, who is accompanied by the assistant principal, Ms Maria Mullan; and Ms Angela Denning the CEO of the Courts Service and Mr. Owen Harrison, the chief information officer. Also attending as observers are officials from the Department of Justice, Home Affairs and Migration, who will assist the committee if any clarifications on the general scheme are required. I ask members who have any issues of that nature to leave them until after we have interacted with our other guests. The officials from the Department are Mr. Paul O'Farrell, Ms Marisa Gomez and Ms Rosaleen Killian and they are very welcome.

Before I invite our guests to make their opening statements, I must advise everyone in relation to parliamentary privilege. Witnesses and members are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity either by name or in such a way as to make him, her or it identifiable, or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks and it is imperative that they comply with any such direction.

I will invite each organisation in turn to make an opening statement and would ask everyone to try to remain within the three-minute limit. Once all of the opening statements have been

delivered, I will then call on members to put their questions. We will start with Ms Saoirse Brady from the Irish Penal Reform Trust.

Ms Saoirse Brady: I thank the chair and the committee for the opportunity to provide observations on the proposed legislation because when enacted, it will have a significant impact on the criminal justice system. These proposals must be considered in the context of a severe prison overcrowding crisis, with almost 5,500 people in custody living in unacceptable and, in some instances, inhumane and degrading conditions. The IPRT has long campaigned for the increased use of non-custodial sentencing options to tackle overcrowding and for a reduction in the use of short-term custodial sentences.

These can have long-lasting negative effects, including family disruption or loss of contact with social or community services or employment. We believe this Bill takes us one step closer to realising the principle of prison as a last resort.

The proposed reforms to community service orders, CSOs, are welcome, particularly the obligation on the court to provide reasons for its decision to impose a custodial rather than a community sentence. We recommend that this data be collected to monitor sentencing trends. CSOs, when used effectively, can benefit the individual and broader society through community participation, improving self-esteem and maintaining links with families and support networks. Where used ineffectively, however, CSOs can have low completion rates, and while they can address recidivism, this also requires access to adequate and appropriate supports, services and employment. We urge the committee to consider how people can be supported to complete community sentences of up to 480 hours in practical terms. To be effective, CSOs should be targeted at addressing the underlying issue connected to the offence and more therapeutic options should be included. Potential barriers to completion should also be considered and supports put in place to help people in employment or with care responsibilities. IPRT recommends that head 25 of the Bill be amended to ensure proportionality in the calculation of community service order hours. We also recommend that the legislation be explicit that CSOs cannot be used in place of other non-custodial sentences - for example, fines where that would currently be the sanction.

I turn now to the proposed introduction of "incapacitant or pepper spray" for general use by prison officers in Irish prisons. We have outlined in detail in our submission IPRT's strong opposition to this proposal. Arming prison officers will not meaningfully address safety concerns and may in fact exacerbate tensions. In fact, recent data indicates a reduction in prisoner-on-staff direct physical assaults. As an intervention specifically designed to cause severe pain, the use of incapacitant spray has significant human rights implications, particularly on the right to be free from torture and inhuman or degrading treatment or punishment. The decrease in staff assaults raises questions as to the necessity and timing of this proposal. The Council of Europe's Committee for the Prevention of Torture, the UN Committee against Torture, the Office of the UN High Commissioner for Human Rights and the UN special rapporteur on torture have all reiterated the dangers inherent in its use and have highlighted circumstances where its use may amount to ill-treatment or should otherwise be prohibited, including against people with certain characteristics or vulnerabilities. It cannot be used in confined or crowded spaces or at a height. Therefore, it is difficult to see how it could be used appropriately or proportionately in the current context of overcrowded prisons. IPRT

recommends that head 20 be removed in full and that prison officers not be armed with incapacitant spray.

I thank the committee for its attention and am happy to answer any questions after the presentations.

An Cathaoirleach: Go raibh maith agat, Ms Brady. Thank you. I hope your timekeeping, which was done excellently, will be followed by others. Next it is my privilege to welcome Ms Hazel Behan, campaigner.

Ms Hazel Behan: A Chathaoirligh, I sit before you, members of the committee, fellow speakers and fellow survivors in the Gallery today not just as myself but as one of the hundreds of thousands of women raped every single day. My story is not unique. That in itself is the tragedy.

I want to speak about the current legislation that allows access to a victim's private counselling notes under the guise of ensuring a fair trial. I emphasise that I believe everyone has a right to a fair trial. I also believe a fair trial should be based solely on real evidence, truth and fact.

The Government's proposed changes still leave open the possibility that a survivor's most personal words can be demanded and scrutinised in court. That possibility alone is enough to deter many survivors from seeking the essential help they need to move forward after the unthinkable. Notes written in therapy, which is a space where survivors like me can begin to process the unthinkable, regain some sense of safety and slowly piece ourselves back together, hold no evidentiary value.

I have had the privilege of speaking to many survivors across the country. Our community is growing at alarming rates. I am acutely aware that I am not here representing just myself today; I am here representing my community, a community of people who have faced the very worst yet still, with unimaginable strength, manage to face each day.

In this vein, I want to bring their voices to this room today, and with their permission I share the following quotes:

> I felt stripped bare a second time in that courtroom, not by my attacker but by the system I turned to for justice.
>
> I never went to counselling because I couldn't bear the thought of my notes being used against me.
>
> I would not want to put myself through the emotional turmoil of pursuing a court case in Ireland. The way survivors are treated is unacceptable and needs to change.
>
> It is a brutal victim blaming system. I know I will eventually find a way through what happened but I am not convinced I will survive the brutality of the "justice" system.
>
> This country has ruined our lives. I'm still being harassed. Reporting is worse than the experience itself by a million.

These are not abstract fears; they are real lived experiences and there are thousands more I could read to the committee today.

Counselling notes are third-party, interpretive documents. A counsellor was not present at the time of the crime and therefore cannot speak to the facts of what happened. Crucially, it is not the victim who is on trial. Yet too many of us leave courtrooms feeling as if we were the ones accused.

Let me be clear: this practice is not about truth or fairness; it is used to undermine victims and damage their credibility. I have experienced this at first hand. It is an outdated, misogynistic process that has no place in a justice system claiming to be "trauma informed". Allowing access to these notes turns therapy into evidence. It tells survivors that their most private attempts to heal can be weaponised against them. Instead of finding safety in counselling, we are forced to self-censor, to stay silent or to carry our trauma alone. That is not justice; it is retraumatisation, sanctioned by this system.

The Government says it wants to create a more "trauma-informed" system, but by continuing to allow this process it is only serving to further silence those who have already suffered immeasurable trauma. What we are left with is not a trauma-informed system but a perpetrator-friendly one.

Other countries, such as the United States, do not allow access to a victim's counselling notes. Importantly, there is no evidence that excluding these notes makes any difference to conviction rates. Survivors there can access the help they need without fear of it being used against them, and we deserve the same.

It is not just survivors calling for this. The message is consistent and united: survivors and professional therapy bodies alike are clear that there must be total exclusion of counselling notes from criminal trials. Nothing less is acceptable.

Let me finish by stressing this: three minutes and one survivor is not enough for the committee to understand the full extent of how damaging this process is. The committee must hear much more, directly from survivors who have endured it, before deciding what is truly fair. I urge all members to recognise that justice cannot be built on violating those who have already been violated. The only just path forward is a complete ban on the use of counselling notes in trial. Survivors should not have to choose between healing and seeking justice. Go raibh maith agaibh.

An Cathaoirleach: Thank you, Ms Behan. I next invite Dr. Susan Leahy from UL to make her opening statement.

Dr. Susan Leahy: I am grateful for this opportunity to attend this meeting and present my research to the committee. My contribution will focus on head 19 of the Bill, that is, the proposals to reform section 19A of the Criminal Evidence Act 1992.

This scheme creates an application process where an application for the disclosure of counselling records will be determined by a judge. Unfortunately, this scheme has failed to achieve its intended objective of preventing inappropriate disclosure of counselling notes. This is largely due to the waiver provision, which has served to circumvent the scheme as complainants have routinely waived the operation of the scheme and consented to disclosure of their notes. The challenges posed by the waiver provisions have been highlighted in my research with legal professionals who work within rape trials, by the O'Malley review and, most recently, in Supreme Court decisions in WC *v.* DPP and DPP *v.* AM. In abolishing the

waiver provision, the proposals in head 19 of the Bill go some way towards remedying the shortcomings of the current regime. However, abolition of waiver does not go far enough and will not offer optimum protection to the complainants in these cases. I propose that the following be considered as further potential reforms to the regime.

First is the extension of the scheme to all "personal records". The use of counselling notes is particularly problematic as their use impacts directly the healing process for victims of sexual offences. My research with court accompaniment workers who support victims of sexual crime demonstrated that some victims may opt not to go for counselling due to concerns that their notes will be used in court, or may opt not to report because they want to engage in counselling without worrying about the possible disclosure of notes. Thus, it is understandable that section 19A has focused on this form of evidence. However, the concerns associated with counselling notes apply to a range of other personal records that may exist about a complainant. The disclosure of such records and their use in a subsequent trial may be equally intrusive and distressing. This includes material such as medical, social work or school records.

The limited nature of section 19A was highlighted by legal professionals in my research who pointed out that other forms of personal records raise very similar challenges to counselling notes but are not covered by section 19A. The O'Malley review also suggested that consideration should be given to whether the disclosure of medical records should be made subject to the statutory disclosure regime. This issue was also highlighted by the Supreme Court in DPP *v.* AM, with Mr. Justice Collins rightfully acknowledging that it is "a matter for the Oireachtas alone to determine whether to extend the statutory disclosure regime beyond counselling notes".

The section 19A regime is based upon a similar scheme in the Canadian criminal code. However, that scheme applies to all personal records. I submit that serious consideration should be given to extending section 19A to include all personal records. That would offer optimum protection to complainants' privacy but also minimise any potential that personal records may be inappropriately admitted in trials and relied upon to unfairly discredit a complainant's testimony. The definition in the Canadian criminal code includes any form of record "that contains personal information for which there is a reasonable expectation of privacy" and specifically references the types of records which this might encompass, including medical, therapeutic, education and social services records. It even includes personal journals and diaries. Even if a decision is taken not to expand the remit of the scheme by applying it to all personal records, some attention must be paid to the decision in DPP *v*. AM where Mr. Justice Collins noted that there is some uncertainty with the current definition of counselling notes and that clarity is needed, for example, as to whether it applies to psychiatric records.

Given the importance of this regime, and the fact that the definition of records to which it applies necessarily dictates its remit, it is vital that the definition is clear and suitably expansive to provide appropriate protection to complainants. A more expansive recommendation which might be considered is whether the scheme should regulate admissibility as well as disclosure. The Canadian scheme, which our rules are based upon, has a process for determining whether disclosure should be granted and a separate process for deciding whether and how the material disclosed might be used in a trial. Put simply, that would mean that if information were to be disclosed to the defence, they would then need to go to court again if they wished to introduce the evidence at trial. Admittedly, this creates another layer in the process and there may well

be concerns about potential delays to which this may give rise. However, it would offer optimum protection to complainants. While disclosure of personal information to the defence in itself is highly distressing and traumatic, its use within the trial compounds this distress. It also gives rise to the possibility that such information may be used in a way which might unfairly undermine the complainant's credibility by introducing details of a complainant's personal life which may not have direct relevance to the core issues at trial.

The proposals to amend the section 19A regime are both welcome and necessary. However, the current proposal is limited and does not offer optimum protection to sexual offence victims. What I have suggested here includes a variety of options for reform, which range from clarification of the application of the regime - the minimum requirement - to its extension to more records and-or to the regulation of admissibility, as well as disclosure. A thorough consideration of these options is necessary if the reforms in this Bill are to hold the prospect of meeting their objectives of protecting the privacy and dignity of complainants in sexual offence trials.

Ms Deirdre Kenny: I thank the Chairperson and committee members for the opportunity to make a submission on this important issue and for giving us the opportunity to address the committee today. Each year, One in Four supports approximately 1,200 men and women who have experienced child sexual abuse, many of whom we accompany through the criminal justice system. We welcome an open discussion on this issue. Every conversation helps to make it easier for survivors to feel seen and supported and for society to respond with empathy and insight. The core experience of child sexual abuse is fundamentally shaped by an abuse of power. Sexual abuse is not just a violation of the body but a profound assault on agency, trust and a child's sense of control over their world.

From our work, we know that survivors of child sexual abuse who engage with the criminal justice system often do so from a position of deep vulnerability. Many have carried the trauma 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. Survivors often carry these wounds into adulthood, navigating feelings of powerlessness and stigma that can persist for decades. How society responds to adults who come forward and whether they are believed, respected and supported deeply matters.

For many, engagement with the criminal justice system is a crucial part of healing. It represents an opportunity to reclaim voice and agency, but this process must be handled with the utmost care. Our collective responsibility is to ensure that, in seeking accountability, the justice system does no further harm but supports, rather than undermines, the recovery of survivors. Building on this understanding, One in Four's submission to the committee draws directly on our experiences of supporting survivors as well as from empirical research, specifically, the "victim experience in focus" report, which was funded by the Irish Human Rights and Equality Commission, IHREC. This research details accounts from survivors themselves about the impact of the criminal justice procedures. It highlights that routine court practices, such as requests for and disclosure of personal records, lengthy hearings and a lack of agency, can compound trauma and, in some cases, deter individuals from seeking justice and therapeutic support.

As outlined in our submission, it is essential that survivors retain agency in decisions about their personal information. All personal records, not just counselling notes but also medical, psychiatric and even advocacy notes, can contain profoundly sensitive details which must be protected by robust statutory safeguards.

Our research demonstrates that exposing survivors to additional court proceedings, particularly when these remove the ability to choose or control what is disclosed, carries a real risk of compounding harm. Any reform must ensure that the justice system upholds survivors' dignity, privacy and right to determine what is best for themselves. I welcome any questions.

Ms Aoife O'Leary: I thank the Cathaoirleach and the members of the committee for hearing from us today. I hope members of the committee will have had an opportunity to read our submission. The Bill is obviously quite wide ranging so we have focused on a number of important aspects of the Bill, the first of which is the proposal to extend remote hearings to virtually all forms of criminal business, including jury trials. It goes without saying that a jury trial is concerned with a matter of fundamental importance: determining whether an accused person is guilty of a serious offence. Obviously, a conviction results in public opprobrium but can also result in a significant prison sentence being imposed, depending on what offence the person is convicted of.

A fundamental aspect of a criminal trial is the ability of the jury to assess the evidence that is given by witnesses from the witness box. That assessment includes assessing the demeanour of the witness giving the evidence in a controlled environment. A further fundamental aspect of a jury is the right of an accused person to be present, to engage fully in the trial and to consult and have adequate access to their legal advisers throughout the trial. We are of the view that a fully remote jury trial will seriously diminish the vindication of those aspects of the trial process.

In our submission, we have noted that certain cohorts of individuals may face particular difficulties in dealing with remote hearings, including those who may have cognitive difficulties, suffer from addiction issues or be neurodivergent. Those concerns relate not just to accused persons but also to the witnesses themselves and to victims. We also note concerns about lay witnesses giving evidence from a remote location, which is uncontrolled, not secure and where there may be other individuals present and where they may be subject to interference or intimidatory behaviour. We also note there are already provisions which permit a trial judge to allow a particular witness to give evidence remotely by live television link where there is some particular difficulty with that person attending court.

The other aspect we have discussed in our submission was the proposed amendment to section 19A of the Criminal Evidence Act to remove the facility whereby the complainant can waive the right to a section 19A hearing and consent to disclosure of their records. That provision will effectively require judicial determination in relation to disclosure in every case, requiring the judge to peruse the records and determine as to whether the record would be disclosed. That will have the effect of diverting judicial resources into conducting such hearings and away from the conduct of trials themselves. We suggest a potential alternative is to strengthen the provisions in relation to the provision of independent legal advice to complainants specifically in relation to the issue of disclosure of records to ensure that any consent to the disclosure is informed consent. We note the developments in the area, particularly the Supreme Court decision in DPP *v.* AM, which recognises both the requirement

to vindicate a complainants right to privacy but also to ensure a fair trial and to ensure that any consent to disclosure is informed consent.

We suggest that strengthening the requirements for independent legal advice may have the desired effect rather than diverting judicial resources into conducting hearings which may not be necessary, where a complainant is satisfied to consent to the records being disclosed having had independent legal advice.

Mr. Liam Herrick: Today, I will present the preliminary submission of the Irish Human Rights and Equality Commission on the general scheme of the Bill. Under section 10(2)(c) of the Irish Human Rights and Equality Commission Act, we have a specific mandate to report on legislative proposals and their implications for human rights and equality. Our submission focuses on four issues raised in the Bill.

The first area of concern relates to heads 5 and 6, which propose to significantly expand the use of remote hearings in criminal proceedings, including trials. While we acknowledge the potential efficiencies of the proposal, we have concerns about the impact on the fundamental right to a fair trial. An accused person's ability to effectively participate in their own trial is a cornerstone of our justice system. Remote proceedings can create a sense of isolation and make it difficult for an accused person to communicate confidentially and effectively with their legal team during a hearing. This is particularly concerning for structurally vulnerable people, including disabled people, who already face significant barriers to accessing justice. We produced research on this problem last year. There is also a risk that remote participation of an accused person appearing from custody, specifically, via video link could be prejudicial, undermining the presumption of innocence. For these reasons, we believe remote hearings in a criminal context must be exceptional and not routine. We recommend that the heads be significantly amended to include robust safeguards and a provision for review.

Second, head 19 concerns the disclosure of counselling records in sexual offence cases. The proposed Bill continues the practice of disclosing highly sensitive records, rather than ending it. This runs contrary to the strong recommendations of international human rights bodies such as GREVIO, the Council of Europe's expert group on violence against women, and the UN Committee on the Elimination of Discrimination against Women. We recommend that this approach be reconsidered with a view to ending, or at the very least significantly reducing, the disclosure of counselling records and extending similar protections to other sensitive documents, such as medical records, about which the committee has already heard from colleagues. We acknowledge the State has made reference to Attorney General advice on this matter but we have not had the benefit of reviewing that.

Third, head 20 proposes to amend the Firearms Act to permit prison officers and civilian gardaí to use incapacitant sprays, such as pepper spray. These sprays are dangerous substances that cause severe pain and can have serious negative health effects. Their use in confined spaces, such as prisons, is particularly dangerous and has been criticised by the European committee for the prevention of torture. Case law from the European Court of Human Rights shows that the misuse of such sprays can amount to inhuman or degrading treatment. We believe alternative de-escalation methods are available and this power is not necessary.

Finally, head 26 proposes to give An Garda Síochána the power to direct a person to remove a face covering in a public place. This proposal could have a chilling effect on the right to

protest. People wear face coverings for many legitimate reasons, including health, religious, cultural or solidarity purposes. This power could be applied in a discriminatory way and would place gardaí in the impossible position of having to discern the intention behind the wearing of a face covering. We recommend this provision be subject to extensive human rights scrutiny and review.

We remain available to the committee for any questions it may have.

Ms Angela Denning: I thank the Cathaoirleach and members of the committee for the invitation to appear today. I am accompanied by Owen Harrison, chief information officer of the Courts Service. I look forward to discussing the service's written submission on the general scheme of the criminal law and civil law (miscellaneous provisions) Bill 2025 with members of the committee.

The Courts Service has been responsible for the management and administration of the courts since 1999. The administration of justice is a matter for the Judiciary and, in accordance with the constitutional independence of the Judiciary and the provisions of the Courts Service Act, is outside the scope of the functions of the Courts Service. Separately, the Judicial Council is an independent body that was established in December 2019 and oversees the education and training of the Judiciary. Therefore, I am precluded from commenting on any matter relating to the exercise by a judge of his or her judicial functions or matters relating to the training of judges. This includes discussion of individual court cases. I am also, of course, precluded from commenting on matters of Government policy.

The Courts Service is mid-way through a ten-year modernisation programme which seeks to improve access to justice in a modern, digital Ireland. This is an ambitious long-term vision of a modern, transparent and accessible courts system that is quicker, easier to access and more efficient. The board of the service has committed in its strategic plan 2024-2027 to supporting several reform programmes with a view to leading transformational change across the justice sector, including our modernisation programme, the implementation of the Kelly review of the administration of civil justice, the recommendations of the judicial planning working group and the family and criminal justice strategies, in addition to the delivery of increased day-to-day operations.

The service was broadly consulted, particularly on parts 2 and 4 of the scheme for this legislation, and in the usual way had an opportunity to provide feedback to the sponsoring Department on the published scheme. Our high-level, head-by-head submission does not include views on technical drafting issues, which will be dealt with by way of direct contact with the Department of Justice, Home Affairs and Migration.

In terms of the provisions applicable to the Courts Service, this legislation is broadly welcome as it includes many enabling provisions which will support our modernisation programme, underpin further digitisation and improve accessibility and organisational resilience. Most legal provisions relating to courts have their origins in a time when we only envisaged the use of pen and paper. In recent years the sector has adopted new technologies and we need underpinning legislation to provide for a digital world so that participants in the criminal justice system can maximise the benefits of investment. For example, prison officers and those in their custody are required to wait in court buildings up and down the country for my staff to prepare warrants after court. In recent years we have developed the capability to

receive charge sheets generated from the Garda PULSE system automatically, reducing errors and duplication of workload. However, the hard copy sheet must still be printed and presented to court. This legislation will facilitate criminal courts to electronically generate, receive and transmit documents, including applications, orders, reports, filings and written submissions, and will support implementation of the recommendations of an interagency working group on videoconferencing and the criminal justice strategic committee subgroup on strategic collaboration.

As already evidenced by the video technology options available in courtrooms, we have seen significant savings and efficiencies for the Irish Prison Service, expert witnesses and the other third parties, not to mention the benefits which victim representative organisations and advocacy groups have documented about their users experiencing easier access and reduced anxiety and stress thanks to video-enabled technology. Therefore, provisions which will enable the reduction of unnecessary travel to and from courthouses have the potential to improve access and save time, money and stress for court users and the State.

The Courts Service has invested in a modern digital platform for use across all jurisdictions and in all case types. As technology available to the courts and justice sector agencies continuously improves, provisions in this legislation will afford judges the discretion to decide that any given criminal proceedings are suitable to proceed either fully or partly remotely, thereby enabling the full use of the available technology, providing flexibility to the participants in cases and value for money for the taxpayer. As with matters held in person, it will always remain the role of the judge to ensure the accused retains all the protections and fair procedures to which they are entitled.

I am happy to take any questions members of the committee have.

An Cathaoirleach: I thank Ms Denning and all our witnesses for their opening statements. A number of members have indicated. I ask them to limit interactions - that is, both questions and answers - to six minutes. We will be as strict as possible and, if time allows, will have a second round. First is Deputy Butterly, followed by Deputy Ward.

Deputy Paula Butterly: I am not usually first off the mark so I thank the Chair. I thank the witnesses for their submissions. When it comes to me, they are pushing an open door with regard to counselling notes. When I was elected last December, one of my first actions was to ask to meet with the Minister, Deputy O'Callaghan, to raise this issue about counselling notes and having them excluded from trials involving sexual offences. I brought it up in the Dáil subsequently and the response is there for everybody to see. I understand to a limited degree what the Minister is trying to achieve but I fully agree with Dr. Leahy that it is too limited and must be expanded to exclude all counselling notes and personal notes.

Perhaps I did not hear it, but it seemed that while Ms O'Leary talked about section 19A, there was no view in respect of whether counselling notes should be excluded. There was a fairness issue and an issue around informed consent. I agree with that. I believe the procedures involved would be more efficient in terms of time and cost. It would be better for the stress levels of the victims, rather than having to wait on a hearing application, to have that informed consent put to them, preferably privately. I would like to hear the view of the Bar in respect of head 19 and the exclusion of counselling notes. I thank the witnesses. They are pushing an open door when it comes to me and the exclusion of counselling notes.

On remote hearings, I accept that there are considerable efficiencies to be made in case management and certain applications. However, I tend to agree that all of us like to look at the whites of people's eyes when they are before us. We have seen the complications of remote hearings or when people are giving evidence. Technical issues can arise and that can be distressing. They also lead to complications. You cannot get a sense of what is happening unless you have a person there. I agree with that. I say "Yes" to the increased efficiencies from technology but "No" to remote hearings, particularly when it comes to criminal trials. I would like to hear the views of the witnesses in respect of the exclusion of counselling notes. I thank them.

An Cathaoirleach: I thank the Deputy. I will call Ms O'Leary first and ask her to keep her response as brief as possible.

Ms Aoife O'Leary: We have confined our submission to the proposal that is in the Bill. The current position is there is both legislative and judicial recognition that there may be cases where there is a basis for disclosing a particular record, and that has been set out and acknowledged in the AM case. The current section 19A seeks to permit a judge to balance the privacy rights of the complainant and the duty to ensure that the trial is fair. We have confined our submission to the procedures around how a record might be disclosed. The AM case recognised that consent to disclosure must be informed consent, and we have focused on that aspect. Any consent that is given must be on the foot of independent legal advice, which would be given privately to the complainant. Perhaps there should be a requirement that the independent legal adviser would confirm to the court that the independent legal advice has been provided to the complainant and on foot of that advice, the complainant wishes to consent to the disclosure of the particular record.

Deputy Paula Butterly: One of the issues mentioned by the Minister, Deputy O'Callaghan, in the Dáil Chamber was the right to a fair trial and the balancing of rights. Mr. Herrick alluded to the fact that there was advice to which nobody has been privy as to where that complication could arise. For women who have trauma, there is the issue of retraumatising victims. I would prefer to see the exclusion of notes tested. We can let the issue go to the courts to be tested rather than making women suffer, or suffer again, by allowing the notes to be made available at the discretion of any judge. I am not taking it out on judges, but they can take objective or subjective views. Where might this issue arise? Would it not be better to be prudent and protect the women by excluding these notes rather than running the risk of retraumatising them?

Ms Aoife O'Leary: A part of the right to a fair trial is the duty on the prosecution to disclose material which may undermine the prosecution case and which may assist the defence. If it is the case that material available in a counselling record would meet that test, and where a judge has looked at that material and made a determination that the correct thing to do to uphold the fair trial rights of the accused would be to disclose the record, that is the basis for that disclosure.

Deputy Paula Butterly: I thank Ms O'Leary.

An Cathaoirleach: Does Dr. Leahy want to respond briefly?

Dr. Susan Leahy: My concern about an absolute prohibition on counselling notes, and the challenge for the Legislature, is that you do not want to bring in a piece of legislation that is constitutionally vulnerable. If you bring a nice piece of legislation through the Houses and it

is struck down, you are back at square one. The focus on counselling notes is understandable, but if we just focus on counselling notes, and if we had legislation that prohibits their use, we would open up a whole other raft of records, which would then start to become the focus of these trials. We might solve one issue but create another problem as all these other records that are unregulated become the focus of disclosure applications. We need to tread carefully to ensure that we are looking in the round at all the potential information, not just in respect of intruding on the privacy of complainants and subjecting them to distress when these issues arise at trial. Research from juries in other jurisdictions shows how deeply prejudicial this evidence can be in terms of myths and stereotypes.

Deputy Mark Ward: I thank the witnesses for the opening statements. I will echo what the Cathaoirleach said at the beginning. I do not think this process does anything justice. Talking about six Bills in one go does not do any of the Bills justice. In the limited time I have, I will not be able to get around to all the witnesses. I will talk about the counselling notes being used in evidence in criminal trials.

My professional background is that I worked as a counsellor for people with addiction and mental health issues, which is all trauma-based. I have not practised since 2018. Over the weekend, I checked the guidelines and the code of ethics of the governing body I was signed up to. The only time I had to break the confidentiality of a counselling session was if I felt somebody was a danger to themselves or others. There was no instruction from the governing body to which I was assigned to say that any of my notes could be used in a criminal case if the prosecution asked for them. Does that only arise in sexual assault cases or is it broadened out into other areas, too? It does not sit right with me, morally and professionally, to hand over notes as a counsellor.

I thank Ms Behan for her testimony, which was powerful and put the human aspect to what we are dealing with today. One of the things she said that struck me was that the practise of using counselling notes in court means that survivors are forced to self-centre and stay silent, or to carry their trauma along. That goes against anything intended by counselling. It goes against what counselling should be for. It is there to deal with trauma, not to make you keep it in.

I have a couple of questions. I met survivors before this meeting. I would like to have had more people in as witnesses. They talked about the psychological harm of the disclosure of their counselling notes. They said it was another form of gender-based violence, but this time in the courts system, against women. That needs to be put on the record. I would have liked to have had those witnesses before the committee. In Ms Behan's opinion, will the current form, as presented today, make things worse or better, or will the *status quo* remain?

Ms Hazel Behan: I am speaking from personal experience. I am certainly not a professional in the field. Nevertheless, I know from the many people I have spoken to that anything less than a ban will act as a deterrent. To be totally honest, if I had known when I started going to counselling, many years ago, that my records would be used against me in court years later, I would not have gone.

Deputy Mark Ward: That possibility was never disclosed to Ms Behan during her sessions.

Ms Hazel Behan: No. There is a confidentiality contract that you sign up to with your counsellor and it refers to a situation where you are going to be a harm to yourself or somebody

else. I get that, and I agreed to those terms. However, I did not find out that my records would be taken until two weeks before they were taken. It was shared with me in the context that I was told if I did not give over those notes, I would not have a fair trial. I do not understand that in the context of the term "fair trial". I do not know where the fairness comes in. For whom is it fair?

Deputy Mark Ward: Ms Behan might know the answer to the following question but it is okay if she does not.

Was Ms Behan's counsellor aware the notes could be taken from them at some stage.?

Ms Hazel Behan: Yes.

Deputy Mark Ward: They were aware. Okay, I was not aware of that.

I want to jump ahead because I only have a little bit of time. Ms Brady talked about the use of pepper sprays in prisons and mentioned the connection between overcrowding in prisons. There is no way pepper spray should be used to deal with overcrowding in prisons. At present, the submission says most of the prisons average at 117% capacity. We have Oberstown youth detention centre which is always at full capacity, with only space for 40 boys there. Could pepper spray be used, under this legislation, in Oberstown and youth detention centres?

I got a response to a recent parliamentary question on people suffering from psychosis within the prison system. They are simply in the prison system because there is not enough capacity in the Central Mental Hospital. I think there are 18 beds that are still not opened. Under this legislation, could pepper spray be used against this vulnerable group? In Wales one in three instances of the use of pepper spray in the prisons was unwarranted and not needed. Is there anything in this legislation that would protect that?

Ms Saoirse Brady: We would hope it would not be used in Oberstown and I do not think it would be. Yesterday, I sent a letter to Oberstown regarding its review of its children's rights policy framework which is fairly strong. In Britain they recently introduced pepper spray against children in youth detention and that would be wholly unacceptable. I would sincerely hope it would not happen here and I do not think there is any proposal for that.

With regard to the people on whom it could be used and those vulnerabilities I mentioned, the CPT and other human rights bodies have said it cannot be used against people with particular characteristics. Some of those are people who are mentally ill. People have died in other jurisdictions, including in New Zealand, where somebody who was mentally ill was subjected to pepper spray and restraint and died following their use. We would hope that would not happen here but it has happened in New Zealand, the UK and New York in the US. We would be fairly concerned about that.

What we would be concerned about is if a violent situation arises, given the overcrowding situation, is every prison officer going to take a step back in the heat of the moment and say "Oh yes, I know that person's medical history. I know exactly what vulnerabilities they have"? At present, the only people allowed to use pepper spray in this jurisdiction are the gardaí and there is very clear policy guidance around that. It is 45 pages long, I think, and is very detailed. The conditions under which the gardaí can currently use pepper spray would not apply in prison. They are usually using it outside and there would be immediate healthcare access

required, particularly for people with certain medical issues, including epilepsy and mental health issues. Currently, given the overstretched-----

An Cathaoirleach: I will allow the witness to come back in.

Ms Saoirse Brady: -----services in prisons, I do not think that is viable.

An Cathaoirleach: I thank Ms Brady for that. I call Deputy Gannon next.

Deputy Gary Gannon: I echo the sentiments of both the Chair and the other members that for a Bill of this size, it is almost farcical that we are being allocated this amount of time to go through such a comprehensive and diverse legislation. I thank all the contributors here today.

I want to ask my first question to Dr. Leahy, if that is okay. From her account, it is clear the disclosure of counselling notes could deter survivors from seeking therapy or from even reporting crimes but she has clearly highlighted the very same risk applies to other personal records, such as medical, psychiatric, school or advocacy notes. Could she expand on the importance of including these other notes in the Bill we are talking about today?

Dr. Susan Leahy: If you think about the invasion of privacy inherent in these notes, there is very similar personal information contained in, for example, your social work notes or in a medical report about you. Even in a school record there could be information that is intensely private to you. That gives rise to two key issues that are very similar to counselling notes. First, the invasion of privacy but something that maybe is not being included in the debate as much as it should be here in Ireland is the discriminatory use to which those records are put at trial. For example, you also have a situation where at present counselling notes, if they are disclosed, may also nod to other records which are not covered by the regime but can then be used much more freely. We know that, though attitudes have improved, there is still myths in society about who is a genuine victim, who is a real victim and what is appropriate behaviour in terms of a genuine allegation and these factors play out as well. Unfortunately for complainants, a spotlight is shone on someone's personal background, their character and behaviour in a sexual offence case and all these records are equally problematic. Counselling records are particularly acute because they are part of someone's healing process but the issues they give rise to in terms of privacy and discrimination, arise in all those other records as well.

Deputy Gary Gannon: I thank Dr. Leahy for that. I want to talk to Mr. Herrick next. He has noted that the GREVIO, the expert group monitoring the Istanbul Convention, has made recommendations in this area. Could the witness say what GREVIO has specifically recommended regarding disclosure of victim's personal records and why those recommendations are so significant for protecting survivors' rights?

Mr. Liam Herrick: I thank the Deputy. In 2023, in its report for Ireland, GREVIO urged the authorities to eliminate the practice of disclosing confidential counselling notes in criminal proceedings without delay. It stated, in particular, authorities should remove without delay, including through legislative means, the obligations and practice to disclose victims' counselling or therapy notes as a part of court proceedings. That is a very clear statement and has been echoed since then by the Committee on the Elimination of Discrimination against Women. It is very clear from a human rights perspective that the *status quo* violates women's rights.

The onus is on the State to justify there is a countervailing balance of rights that requires modification of the position. The difficulty is we have a very constructive engagement with the Department of justice on this legislation but we do not have a clear articulation of what the other constitutional considerations are. In our view, it is very clear whereas the Supreme Court now seems to be suggesting counselling notes should only be disclosed in exceptional circumstances. How that then gets translated into guidelines, which would in reality mean it was the exception rather than the rule, I think is a challenge for this legislation and for the courts.

Deputy Gary Gannon: I think it is imperative the committee establishes from the Department why exactly it is deviating from those best practices.

I want to move onto the pepper spray in prisons. Ms Brady mentioned that in rare cases, chemical irritants can cause death. We know from the CPT report that there has been a pattern of preventable deaths in custody and a lack of reviews to prevent reoccurrence. I imagine there will be individuals at particular vulnerability to these chemicals and perhaps an increased risk, given it will likely be used in confined spaces and areas with poor air circulation. Is that a concern her organisation would have?

Ms Saoirse Brady: It does concern us. When you look at the Garda guidance, one of the things it refers to is people having access to clean, fresh air. For the majority of people, the effects of pepper spray will dissipate then. If you are talking about an overcrowded prison situation, however, and we have been to Mountjoy recently and stood in the cells - there is not room to swing a cat, a cell is the size of a car parking space and two, three and four people are in there - using pepper spray in that instance, on a landing as well where it can permeate right down through the whole section, it puts not only people in prison at risk but staff members as well. Are those vulnerabilities are taken into account?

We do not know - the legislation is very light on detail - if we are talking about every prison officer or if it will be on a landing. A superintendent has to give permission for pepper spray to be used in particular circumstances by the gardaí. We do not know the detail of it and we would be concerned about introducing any weapon into the prison at present.

Deputy Gary Gannon: What is driving the need for such a chemical irritant in prisons and what does the evidence tell us? Have prisoner-on-prison guard assaults risen or is that not the case?

Ms Saoirse Brady: It has gone down in terms of that but what we do see are fewer physical interventions from prison officers and we do not know why. I think there is merit in looking into that further but the evidence from Britain would certainly say that, and this is from the prison authorities themselves, there has been no evidence to suggest this reduces violence in prison.

Deputy Gary Gannon: Thank you, Ms Brady.

An Cathaoirleach: Deputy Brabazon is next, followed by Senator Kelleher.

Deputy Tom Brabazon: I thank everyone for coming in and giving their various perspectives on this legislation. It is very welcome. In particular, I want to pay tribute to Ms Behan's contribution which was erudite and brave.

It gives serious weight to our consideration of the head 19 aspect of the legislation.

I wish to move away from that briefly and onto the issue of the face mask, which was raised by Mr. Herrick. I find it hard to accept the position he has adopted. In Dublin, particularly in the inner city, the north side of the city and in other parts of the city as well, we have serious issues with youths masked up going around on e-scooters, e-bikes and electric scramblers. They are not wearing any protective gear. They are clearly intimidating local communities. They are selling drugs. They are getting up to all kinds of criminal activity and antisocial behaviour. We have to do something to tackle that. One of the measures has to be the removal face masks. He raised that people wear face coverings for religious reasons. He also raised the issue about people wearing face masks and that it might undermine the right to protest. Has Mr. Herrick any alternatives to the proposal in the legislation that might tackle that youth side where we see it prevalent on our streets with drug running and all that nefarious activity?

Mr. Liam Herrick: Our office is in the city centre. I have worked in the city centre of Dublin for over 20 years. The problem of public disorder and crime committed by young people is at a high level at the moment. The fact that young people are committing offences, such as selling illegal substances, breaking road traffic laws and so on, is probably a much greater problem than the fact they are wearing face coverings. I absolutely agree that there is a real question about reviewing the issue of public order and crime in the city centre at the moment. This proposal does not seem to address any of that. It deals specifically with the issue of face covering. We understand it is intended to apply to the situations of demonstrations or protests, as opposed to people committing crime and happen to be wearing face coverings while they are doing so. In that regard, we understand the purpose behind it, but the first test would be whether the current legislation is sufficient to deal with the problem.

As the Deputy knows, the powers under the Criminal Justice (Public Order) Act 1994 - sections 6 and 8 of that Act - provide the gardaí with significant powers to deal with situations where people are engaged in intimidating or criminal behaviour and are seeking to frustrate the work of the gardaí and obstruct them or failure to comply. Are the powers under that legislation sufficient to deal with the problem? The problem is that in some instances during public demonstrations or protests people may use a face covering with an illegal intent or purpose, but that may already be covered under the Act.

The danger in legislating in the way that it is proposed at the moment is that we might capture a whole other category of behaviour, which should not be criminalised. There are real instances of people who wear face coverings either for health purposes, religious purposes, or, for example, to show solidarity with the people of Palestine by wearing a keffiyeh. I do not think the intention is to cover that, but unless the legislation is drafted in a precise way there is a real risk that it might do.

In the United Kingdom, where legislation was initially introduced to deal with the use of face coverings to evade justice or intimidate, there are now proposals to make the wearing a mask itself a criminal offence regardless of those associated intentions or effects. We all understand and share the objective of dealing with the same problems. However, this may be misconceived, may be unnecessary and may have unintended consequences.

Deputy Tom Brabazon: How can An Garda Síochána chase? There is a policy that An Garda Síochána do not generally chase these youths in a vehicle. They do not have the way to

shunt people off vehicles the way the London Metropolitan Police does. If there is no other way of catching them by hot pursuit or chasing them, how are these perpetrators supposed to be identified? If they put on a face mask, they are not identifiable so there are no consequences. We cannot have a situation on our streets where there are people engaged in criminal activity and there are no consequences. That is why I was asking about the alternatives.

Mr. Liam Herrick: There is a deep frustration with certain types of criminality that have a real effect on many communities not being dealt with and not having consequences. I do not share the Deputy's analysis that a lack of a law, specifically allowing the gardaí to direct people to remove face coverings, is the most important part of that problem. There are much wider problems but not enforcement of other types of the law. It may be associated with resourcing issues as well. We do not necessarily share the Deputy's analysis on that.

Deputy Tom Brabazon: That was not my analysis. That was just one aspect of what I was highlighting.

Mr. Liam Herrick: The specific intention here seems to be to deal with the public order context, for example, around public demonstrations and protests. There are specific constitutional rights and rights under the European Convention of Human Rights that are stronger in that instance. We have seen this type of legislation playing out in other ways with unintended consequences.

An Cathaoirleach: I thank the Deputy. We will try to get him back in for a second round.

Senator Garret Kelleher: Gabhaim buíochas le gach éinne as ucht na scéalta atá cloiste againn istigh anseo. Like my colleague, Deputy Butterly, I also have concerns about the use of counselling notes. That was excellently articulated by the courageous contribution of Ms Behan, and also by Dr. Leahy. One of the quotations that Ms Behan gave in her evidence about somebody who felt stripped bare in court not by the attacker, but by the system she turned to for help is a strong statement of how we should approach legislating around the aspects of head 19.

I wish to focus on head 25 and the contribution made by Ms Brady and to ask a little bit more about the community service orders. Ms Brady mentioned in her opening statement about where CSOs are used ineffectively, they can have low completion rates and while they do address recidivism that has to be done in conjunction with adequate supports, services and employment. Will Ms Brady elaborate a little bit further with specific reference to recidivism given the overpopulation in prisons at the moment? What are rates of reoffending for people who have been through community service orders as opposed to those who have received custodial sentences?

Ms Saoirse Brady: I do not have the figures, but my colleague, Ms McCormack, might. I do not know if they capture the actual figures of the recidivism rates for CSOs particularly. What all the international evidence would demonstrate is that people who serve prison sentences of 12 months or less are more likely to reoffend in the future because they are not getting the supports. That is in the past. However, now in the context of a prison overcrowding system, people do not even get to the top of queue for assessment for the mental health, addiction or other therapeutic supports they might need in prison before they are back out into community at the bottom of that waiting list. That is what leads to this revolving door of prison.

On the community service orders and some of the points we are making are around that, we think it is a welcome thing that it would be expanded. Judges will welcome that. We have spoken to judges. At the moment, they feel that they do not have enough options open to them. We urge the committee to look at the community sanctions Bill 2014, which would expand the types of options available to judges rather than custodial sentences. This is just one small part of it. The piece around expanding it 480 hours while in theory we welcome this, but in reality if people have care responsibilities, childcare responsibilities, have to make therapeutic appointments and happen to be in employment, the opportunities for them to carry out 480 hours of community service are limited. We will then see a non-completion of community service. Even if they do 320 of those hours, if they do not complete the whole thing there is a risk that they could have to go to prison. It is our concern that not all the supports might be put in place for people to be able to do that. I have spoken to the Probation Service about this.

The high demand for community service happens at the weekends. It will need proper investment to expand the service availability to evenings, to Sundays and to other days. The placements need to be expanded too. At the moment, there are community-based organisations in certain areas, but that will need to be expanded fully. One of the points I would make is that, if you look at budget 2025 last year, the probation service in total got €16 million. The Irish Prison Service got an additional €79 million on top of what it already had. If we really want to expand the alternatives to custody, we need to invest in them properly.

We will come back to the Senator about the recidivism rates. We will look at those and see what the breakdown is. As far as I am aware, there is not a breakdown of community service as opposed to the other probation measures.

Senator Garret Kelleher: That would be great.

An Cathaoirleach: I propose that we invite a non-member of the committee, Deputy Coppinger, to speak, and give her six months. Six minutes.

Deputy Ruth Coppinger: Six months. I probably could.

I thank the Chair. It was important to come into the committee meeting today, because out of all of the issues that I have raised relating to sexual or gender-based violence and the ten-point plan that we proposed, the counselling notes is the one single thing that has agitated survivors, therapists and the general population the most, not anything else. I think I can safely say that. We keep hearing these great claims of how it is so important for a fair trial, yet not one person has ever pointed to a piece of evidence that has emerged from a counselling note that was so important to anyone's right to a fair trial, but what we have heard is the massive damage that it does, of retraumatising, again and again, people who have already been totally brutalised in the most horrific way. We have to listen to survivors. We are meant to have a trauma-informed system and we cannot just blithely pass over with this claim that a constitutional right to a fair trial would be impaired. There is a balance here. There is a balance to a right to healthcare and a right to privacy. If people are going to say that this must be kept, they will have to give much more justification.

I want to make one thing clear. The way this meeting is set up today is completely at odds with what is needed. For example, no therapists are giving evidence here. There are some in the Gallery. There has been a movement of therapists against this practice over the summer and preceding it. All of the professional bodies, the psychology society of Ireland and the other

bodies, have come out against this practice. They want it outlawed completely. That is a real lack at this committee. I would like to ask them why they feel it is so important, how it is impairing their relationship with their clients, and so on.

In the last 48 hours in this country, four people have been victims of male violence, plus a suicide. This is a huge issue worldwide and globally. What is this Oireachtas doing about it? Very little. This is something simple that it could do very quickly, but it is choosing not to. This is a misogynistic practice. In reality, it is used by the accused to intimidate and undermine the character of the person taking the case. That is primarily what it is for. That is shown by the fact that it has been constantly requested of late. That is why the Minister is now trying to make it more difficult, but in doing so, he is just taking the easy option, because the practice itself and the possibility of it being used is causing the stress and the trauma.

I heard from a Psychological Society of Ireland practitioner that a teenager has pulled out of their CAMHS counselling. This is a victim of child sexual abuse stopping their counselling because they heard this public discourse about the counselling notes. I hasten to add that I was approached about a week ago by a male victim of sexual violence, who thanked me for taking up this cause, because his notes had been accessed in a child sexual abuse trial.

Regarding evidence, hearsay evidence in general is not allowed in court. The exception to that is a confession, but it also seems that the exceptions to that include third-party notes. How do we know therapists are even accurate in their assessment? They could be prejudiced in their own way, could have had a bad day, could have fallen asleep or might not have been listening. How are we allowing third-party notes in trials when there is no basis for them?

I wanted to take up a couple of things. Dr. Leahy mentioned research. I would slightly disagree with her. I think we should move to ban the counselling notes. I am not saying we should not do the other things, but there is not a comparison, from what people have said, between therapy notes, which are your method of healing after trauma, and the accessing of this other information. I feel that you might be delaying a necessary reform by adding all the other things when it is clear that this could be moved on. One could also argue that there are more facts in the other things. These are third-party notes of somebody's therapy.

I will finish by talking about the deletion of section 19A. It is argued in the note that was sent to the committee that we are now rebalancing the situation. All that is being done is that you are taking it out of the hands of the survivor or victim and taking it to a judge. It could lessen the practice. We do not know, but it is still there as an option, and there has never been any evidence that it is needed.

Mr. Herrick mentioned these international bodies, which I think needs to be brought out more, and why they oppose this practice. What have they found? Is Ireland different from other countries? Is there some evidence of damage this is doing worldwide?

An Cathaoirleach: We will ask some of the guests to respond later. I have no other members indicating for now so I will ask a few questions and make a couple of comments, if I may. In respect of head 19, which relates to the issue of counselling notes, I note the frustration and perhaps even anger that there was not space for more victims, therapists and others who have specific understanding here today. We are not dealing with legislation. This is pre-legislative scrutiny, which is an opportunity for this committee to give a report to the Minister indicating where we think the legislation can be improved. I cannot pre-empt what members will decide

that report should say, but I want people to know they have been heard. My sense of it is that the committee will be incredibly strong and united in delivering the message that we have heard from all the witnesses, particularly from Ms Behan's testimony here today.

This is one of the areas where I have to admit absolute ignorance. I was not aware that this was even a thing before Deputy Coppinger's Bill was brought to my attention. I think most laypeople would find it absolutely bizarre that a third-party account of a very intimate conversation that had taken place after the fact could be presented in evidence at all, never mind in a manner that would be used against the person who had sought counselling in the first place. I accept that the Minister has legal advice from the Attorney General. I just cannot fathom how that legal advice could have come about. I do not know if any of our guests can shed a light on that but I can see no other comparable area in criminal law where a defendant would use private, intimate details and notes of a conversation or a set of conversations, and one person's interpretation of that.

It is not even a direct recording of that conversation; it is a record of a therapist. It goes against everything we should be trying to do which is ensure people who have been through traumatising experiences seek support. There is a distinction between this type of record and a medical record, for example. A record of a medical nature sets out very clearly on an evidentiary basis what might have been presented; injuries, for example. Arguably, there is a case that this information might be warranted in a trial. That cannot be compared to intimate conversations from a therapist's chair where there would be a subjective viewpoint, no matter how you put it. This has been raised a couple of times and has raised concern. Had Ms Behan known this would have potentially been used as evidence by a defendant in a trial, she would have been at least reluctant to attend counselling in the first place, if she had not absolutely refused to do so. From her experience in dealing with her own case and other victims, what would it have meant if something like this had been a factor in deciding not to attend therapy? In other words, what would the impact be on victims if they did not see therapy as an option?

Ms Hazel Behan: To be honest, I would not be here today if I had not gone to counselling and therapy. I do not say that lightly or for shock value. It is the truth. Following the unthinkable, a person no longer exists. The Hazel I was before was not there any more. Therapy was about getting to know this new person I had become, and figuring out life after that. 99% of the conversations I had with my therapist during our sessions did not concentrate on what happened. They were about navigating life after what happened. They were about navigating normal everyday things that unfortunately seem more difficult when you are going through dealing with such trauma. While my therapist knew what happened to me and it certainly was something I discussed, the majority of our sessions concentrated on the after, not on the then and what happened then. If I did not have that, I can confidently say I would not be here today; without a doubt.

An Cathaoirleach: That is stark. I have a short amount of time left. I wish to ask the Courts Service a question. Parts of the issues we deal with as a committee and have heard are the lengthy delays in the Courts Service. Is there anything in the heads of the Bill that give the witnesses confidence these measures will ensure a more efficient Courts Service overall?

Ms Angela Denning: The provisions that allow for the improved used of technology will improve efficiency and reduce delays. On practical issues, there was concern about the use of remote courts for procedural and trial matters. We recently came through the pandemic. There

were significant delays because we did not have the technology in place to do that. We need to have measures in place to assist in the event of prolonged weather events or disease outbreaks. If there was an outbreak of TB or measles, for example, in the Criminal Courts of Justice in the morning, 23 courtrooms would be out of action for a period. Security or medical concerns are other areas where I see technology being used. If the accused or the judge got sick, do you have a retrial because the judge got sick or can the judge dial in remotely? There are places where I see the technology assisting us, certainly in the provisions for the exchange of documentation such as electronic warrants. There are loads of provisions where we can use technology to improve the efficiency across the system for us, the Garda and the Prison Service. This would assist data input and that type of work.

An Cathaoirleach: Do Senator Rabbitte or Deputy Cahill want to comment? No. If not, I can open to a second round with others with three minutes per member. I call Deputy Ward.

Deputy Mark Ward: On overcrowding in prisons, will the witnesses give meaningful suggestions that would stop overcrowding?

Ms Saoirse Brady: One in five people in prison are currently on remand. The high rate of remand needs to be dealt with. The issue of people being detained when some do not go on to serve a sentence should be addressed. Community service orders are also part of that. I mentioned the community sanctions Bill earlier. We have spoken to judges. They say they do not have enough options open to them for alternatives to custody, particularly for those who will be sentenced for very short periods. I think last year over 1,000 people were released from custody after 24 hours. I question why they were sent to prison in the first place if the Prison Service deemed them to be of so little risk to the public that they were then released. The short sentences piece is something we really need to crack. Community service orders go some way towards that. The prison overcrowding response group provided a report to the previous Minister for Justice. It put forward some really practical solutions like a review and expansion of the drug treatment court. It looked at a temporary release scheme for women in particular which has been piloted. There are bail support schemes. I have spoken about this before with Deputy Ward. They work effectively in the youth justice system. The IPRT's pre-budget submission for this year refers to putting in place a bail support scheme for women in the first instance and then expanding it to others. Ms McCormack may wish to comment.

Ms Niamh McCormack: A lot of the time, people in remand custody, particularly women, are there because they cannot afford to pay their bail bond or because the judge does not want to release them out into homelessness. There is a huge issue of prisons dealing with issues in society that will not be dealt with by anyone else. The complicated issue is that further upstream supports need to be provided for people who commit what are essentially poverty crimes - people who steal groceries, those who commit stealing-for-survival crimes and people in active addiction. Those people need supports, particularly at the point of remand custody. A lot of them commit really minor offences. They go through a revolving door.

Deputy Mark Ward: They will not get that support while they are in prison because it is a short stay.

Ms Niamh McCormack: Exactly. With remand, they will come through the revolving door of getting on the list, coming back out, falling into the same cycle of addiction and going back through the door again. It is a huge issue.

Deputy Mark Ward: On the bail supervision scheme, I believe it is moving from the Department of justice to the Department of integration. Will that help? Do the witnesses have concerns about it?

Ms Saoirse Brady: I do not have particular concerns about that because there is a young people's probation service already, and the Probation Service has relationships with a lot of those young people. We will watch that space.

Deputy Mark Ward: Is the Probation Service resourced enough to carry out that bail supervision?

Ms Saoirse Brady: No. It will need to be significantly resourced especially if there is talk of expanding it past Dublin, Limerick and Cork. We need to see that. When we look at who is in Oberstown, we see that judges are clearly using it in those three locations. The areas outside of that, where they do not have a remit, is where a lot of young people come into the system for very minor crimes that could be better dealt with using therapeutic supports through the bail supervision scheme.

Deputy Gary Gannon: The Bar Council referenced in its submission that the Bill would require a court hearing in every single case. It warned of this potentially causing more delays in a system that is already slow and onerous. Will Ms O'Leary recommend specific provisions to make the system more efficient and victim-centred or even fairer?

Ms Aoife O'Leary: Specifically on the proposed amendment of section 19A, the warning about the diversion of judicial resources was in relation to the result of the proposed amendment being that a hearing would be required in every case where the judge would have to review the record and determine whether it would be disclosed.

That would divert judicial resources into conducting those hearings when that judge might be presiding over the trial itself. Our suggestion is that consideration be give to the provision of the independent advice to the complainant, who then can give informed consent, where she or he wishes to, to the disclosure of the record.

We have confined our submission to the proposal contained in the Bill but it is important to say there may be a certain level of misapprehension among members as to how counselling records may be used and what their status would be. It is not the position that, where a counselling record or portion of a counselling record is disclosed, it becomes evidence in the case automatically. It is not the position that the entirety of a counselling record would be disclosed. The judge presiding over a section 19A hearing would have to look at the particular portion of the record that it was proposed to disclose and determine whether there was a compelling basis for the disclosure of a portion of the record. It may then be that the defence may seek to ask a complainant a question arising from that. All of that is subject to the trial judge who is presiding over the trial and ensuring it is fair, preventing any oppressive questioning of the complainant. Ultimately, the complainant's answers in relation to any questions about the record would be the evidence, not the record - the piece of paper itself - that was presented. I just wanted to say that in case there was some level of misapprehension about the status of a counselling record and its use in the court.

Effectively, we are saying that if there is the provision of independent legal advice outside of the courtroom and if the complainant is fully advised on all aspects of the counselling record

and what is proposed to be disclosed, and if having received that advice the complainant wants to stand in his or her absolute right to have the section 19A hearing, then she or he can, but if the complainant is satisfied to consent to the disclosure of the particular record, she or he can do so. The independent legal adviser could then come into the court, inform the trial judge that legal advice has been given and that the complainant has given the indication she or he has.

Deputy Gary Gannon: I would like to come back on that issue. Very briefly, I have a question for the Courts Service. We spoke about how increased technology would improve efficiency. Is that the only barometer by which we should increase technology?

Ms Angela Denning: No. There is some very practical uses for technology that help people. I attended an Oireachtas committee meeting during Covid where victims - I think it was the National Advocacy Service - said that technology helped people. It can improve accessibility. For people with physical disabilities, it can improve their access to courts. I know we are here to talk about crime but on the civil side, we have seen increased participation of wards of court in court proceedings because they can dial in from the nursing home, hospital or wherever to participate and the judge can talk to them. We have seen increased participation and there are benefits other than just to efficiency.

Senator Anne Rabbitte: I am confused as to the lady who spoke second last, as I cannot see the names. It was Ms Aoife O'Leary. I am glad I listened to the flow of conversation because I am not a legal eagle; I am just a plain Jane. Plain Jane would not have understood that, if God forbid she found herself in a position where she needed support and accessed therapy, counselling or whatever, due to section 19A somehow or another, she and her representative could go into their little room and have a conversation about whether they were going to use her notes and she would have a choice to use them. Will Ms O'Leary explain this in plain language so that I can understand exactly what she just said because it sort of counteracts what the Cathaoirleach spoke about a few moments ago?

Ms Aoife O'Leary: If I understand, does the Senator want me to explain the section 19A procedures?

Senator Anne Rabbitte: No, I want to understand when my notes would be used in that context.

Ms Aoife O'Leary: Section 19A makes provision for a hearing for the judge to determine whether a particular note would be disclosed to the defence. Section 19A sets out that the judge has to have regard to the effect on the complainant and to the requirement to provide a fair trail to the accused person. Section 19A provides that, where a complainant consents to the disclosure of the note, there is no need for the court to have a hearing about the disclosure.

The Bill proposes to remove the facility for the complainant to consent to the disclosure. We said in our submission that an alternative may be to strengthen provisions that were already there, such as providing independent legal advice to a complainant from independent legal advisers who could advise the complainant in relation to the potential disclosure, and in relation to the particular disclosure. The complainant could then make a decision, informed by that legal advice, as to whether she or he wishes to have the hearing before the judge, where the judge will review the record and make the decision as to whether it is disclosed, or is satisfied to consent to the disclosure of the particular record.

Senator Anne Rabbitte: These are notes that are taken from a therapy session.

Ms Aoife O'Leary: Yes.

Senator Anne Rabbitte: These are notes that, when I became the victim and went to make my complaint, I was unaware could possibly be used against me in a court of law.

Ms Aoife O'Leary: I am speaking only in relation to the legal provisions on this. I cannot comment on a specific case or what a therapist may have said.

Senator Anne Rabbitte: We are just talking in the hypothetical. I am talking about if I was the victim and I went and got therapy or counselling, and confided. Trauma can start at any stage. It might have been rooted in trauma from the past and may not just be present trauma. There could be childhood trauma there that is now contained in my counselling notes that are now subject to consideration of whether they would be put on display so that somebody can determine whatever about me. This might have nothing whatsoever to do with the immediate situation but could be from the past. That is a hypothetical case. This is all makey-uppey.

An Cathaoirleach: Just to clarify, Ms O'Leary is here to represent the Bar of Ireland. She is not here to defend the Department or her practice.

Senator Anne Rabbitte: I am not asking her to do so.

An Cathaoirleach: I want to be very clear about that.

Senator Anne Rabbitte: I do not expect her to.

Ms Aoife O'Leary: Yes, and our submission is confined to the proposal in the Bill. The disclosure is confined to material that is relevant. It is not wide ranging in terms of material that is completely irrelevant to the issues being determined in a trial. Any disclosure that would be made would be confined to material that is potentially relevant to the issues to be determined in the trial, which is the guilt or otherwise of the accused person.

Senator Anne Rabbitte: As a female - I do not doubt it would be the same for males - I would be totally uncomfortable. Like the Cathaoirleach, I would not have ever known this was a thing. It is unbelievable.

An Cathaoirleach: I wonder just on that note if Dr. Leahy might be able to outline in more detail the circumstances in which we would get to the point Ms O'Leary spoke about. How would the defendant become aware therapy notes even existed?

Dr. Susan Leahy: I think my colleagues at the Bar would have better knowledge of that. I am not a practising lawyer. We know that a lot of defendants will know their victims, so they may have personal knowledge and know that someone has gone to counselling. There is a practice we need to be aware of. I will take the committee through the history of me discovering this. I have been working in this area for nearly 20 years and did my PhD on it. When I first looked at the rules of evidence around sexual offence cases, there was no book that spoke about counselling notes, but when I went out to interview barristers for my PhD research, they were talking about counselling notes. That is when I first became aware of this quite a long time ago. This practice has built up over the years.

Asking for counselling notes has just become part of the criminal justice process and it is very wrong. There is this perception that it is-----

An Cathaoirleach: Am I correct in saying it is standard that the defendant's team ask for the counselling notes?

Dr. Susan Leahy: My understanding is that the request can be made quite early in the process as well, that they can be made at investigation stage.

I am open to correction because I am not a practising lawyer, an investigator or a therapist. My understanding is that a request for counselling notes is almost standard.

An Cathaoirleach: Am I correct in saying that, under the current rule, before we deal with this legislation, a refusal by either the therapist or victim in a case to supply counselling notes would be considered by a court to be prejudicial against the defendant? Is this the reason they are divulged in current circumstances?

Dr. Susan Leahy: Under section 19A, if there is a refusal, it goes to a disclosure hearing.

An Cathaoirleach: This is under the proposed-----

Dr. Susan Leahy: No, under section 19A there is-----

An Cathaoirleach: Under the current section 19A?

Dr. Susan Leahy: Yes.

An Cathaoirleach: Does Dr. Leahy have an idea of how often, or in what proportion of instances where the notes are sought, section 19A is involved?

Dr. Susan Leahy: My research was done in the summer of 2019, when the legislation had been live for just over a year. No legal professional I spoke to had any experience of the disclosure regime in operation. The legal professionals stated that, in general, they felt that waiver was common and that complainants were waiving because they did not want a delay. They gave the notes because they did not want to go to a hearing or have any more delays. Another key finding of my report was that the delay endemic in the system is a massive source of trauma for victims in the process. My instinct is that I do not think when people are asked to disclose their notes they would ever dream of those notes being used against them. My instinct is they may say, of course-----

An Cathaoirleach: I apologise for interrupting but I must be as tight on time with myself as I am with everybody else. Under the proposed heads of Bill, the new situation would be that it would automatically go to a disclosure hearing. In those instances, the judge would be provided with the counselling notes.

Dr. Susan Leahy: Yes.

An Cathaoirleach: I would imagine that, for most victims, it is not necessarily about the court being informed, but about anybody being informed of what was disclosed. For a judge to be determining whether something is admissible, is there anything comparable in Irish law? Can any of the witnesses indicate this?

Mr. Michael Hourigan: I am grateful to Dr. Leahy for the invitation to add to what she has said. Arising from the provisions of section 19A, the prosecution is under an obligation to disclose the existence of counselling records to the defence in these cases. It does not then disclose them without the leave of the court. Obviously, as the committee is aware, there is a process by which disclosure takes place or not.

As Ms O'Leary has said, we have come here recognising the de facto position, which is that the Oireachtas and the courts have recognised there will be instances where it is considered that disclosure should occur. It is very difficult. I am aware of the contributions made by various members of the committee on this issue at various stages. I know the Minister said, in the context of one discussion, that one of the most difficult things to do was to resolve competing constitutional rights. To bring it back to the query the Cathaoirleach raised as to how a subjective view taken on something that was said could be relevant, just to be clear, it would not be the view of the counsellor that was of relevance but rather, perhaps, another account that a complainant had given that the court might think was appropriate to be disclosed.

I should also say that not only in relation to section 19A, but also arising from the Supreme Court's decision in AM, there has been very much an evolving sense that the rights of an accused person have to be balanced against those of a complainant. As has already been referred to by Mr. Herrick, Mr. Justice Collins in the Supreme Court spoke about very limited situations in which this disclosure should be made. His specific words were that it would need to be shown that the records were likely to have real forensic value to the accused's defence.

An Cathaoirleach: If Mr. Hourigan does not mind me interjecting, if my house was burgled and I happened to be traumatised by it, and a defendant was on charge, there are no circumstances whereby anything I said to a therapist would be considered evidence as to whether the house was burgled.

Mr. Michael Hourigan: I will give an extreme example. It might be that the Cathaoirleach said Mr. Hourigan burgled his house but on another occasion said it was somebody else. Perhaps it would be considered appropriate for the accused to be made aware he gave two accounts. I am giving a completely hypothetical example. The starting position is that the Bar recognises that the instances in which disclosure would be made are restricted. This is set out not only in the legislation but also in what the Supreme Court has said. What we propose does not go to that, but it goes to what is in the proposed legislation.

An Cathaoirleach: I see what------

Mr. Michael Hourigan: There was a query about how that would operate. As matters stand, if these hearings take place, complainants are in the building of the court and lawyers must come to court, often having to be found at short notice, and consultations have to occur. All of this happens in the context of the trial process. What we propose is that advanced legal advice be provided to complainants so they can make informed decisions. The evidence appears to be that people have found themselves feeling pressurised, whereby if they do not comply, it will somehow jeopardise the trial process.

An Cathaoirleach: I have no difficulty with it being turned back on the defendant. I do not buy it, to be honest. From the evidence we are hearing, I see this as a standard mechanism of a defence team to simply be a chilling factor to try to scare off a victim or further add to the

trauma of the victim. It is a way of finding a crack in the prosecution's case. I am deeply troubled that it is a standard practice.

We have seven or eight minutes, if members have final questions.

Deputy Paula Butterly: It is a little bit off centre but we were speaking about efficiencies, remoteness and technology, but nobody has mentioned the people in the Courts Service or, more particularly, barristers. There seems to be an omission of the fact that, in order for all of this to happen, we need a steady pipeline of barristers coming from year 1 right through. Is there a place to include in this the restoration of barristers' fees for legal aid? We know there will be an increase in the number of judges. I represent County Louth and Dundalk and Drogheda have, I believe, six courtrooms. How could I forget Ardee, which is my district? Add that in as well. With the increase in judges, I hope we will be able to fill these courtrooms more often but we need a steady pipeline of barristers. One of the most off-putting things for young barristers - we have all received representations on it - is the fact there has not been the proper restoration of legal fees for them. Is this an omission from the proposed legislation? Does it sit here in terms of efficiencies? If one link in a chain is weak or broken, the whole thing will fall down. I would like to hear the opinions of the witnesses. I am not sure whether Ms Denning will want to give an opinion on this but perhaps the witnesses from the Bar will give their opinions.

Ms Aoife O'Leary: We would certainly welcome any commitment and any legislative provision that provided for the restoration of our fees. We welcomed its inclusion in the programme for Government. We have set out the case for restoration quite clearly on a number of occasions. We welcome Deputy Butterly's comments.

Deputy Paula Butterly: Would there be a purpose to put it on a statutory footing? While barristers are independent, is there a place for a statutory footing for these fees, whereby they can be benchmarked somewhat similarly to a public service job?

Ms Aoife O'Leary: There was previously a link between legal aid fees and public service pay agreements.

We certainly regard that the full restoration of our fees should include the restoration of that link. We would welcome the inclusion of that and it being put on a statutory basis.

Deputy Michael Cahill: Some courts in Kerry are not suitable as family courts. They have no privacy whatsoever. I have heard of a number of very sensitive cases where divided families are grouped with a number of families and abuse has been thrown. That is not good enough in this day and age and must be addressed.

Is there anyone present who can look into the old courthouse in Killorglin? It was closed a number of years ago. There was a public-private partnership carried out between Kerry County Council and Fexco. It was supposed to be for the new courthouse. I have raised this time and again over a number of years both as a councillor and here. Can it be looked into? It is a loss for the town of Killorglin. Do we have any update on Tralee Courthouse?

I have had a bee in my bonnet for many years over my last point. Coroners' fees and expenses are covered by local authorities, with the exception of Dublin for some reason. In our case, it has cost us millions of euro over the years. We should not have anything to do with the Courts Service or paying coroners' fees and expenses. I am not criticising their work at all

but our funding should be spent on roads and housing, etc.; things that local authorities are specifically responsible for. I know it is being looked at but I would like to see that bill taken off Kerry County Council's budget and transferred back to the Department of justice where it rightfully belongs.

Ms Angela Denning: Coroners' fees are a policy matter. That is a question for the Department of justice. I understand there is a piece of work under way in relation to coroners. In relation to Tralee Courthouse, the Courts Service has purchased a site in the town for development as a four courtroom courthouse. We currently have 102 court venues nationwide and Killorglin forms part of that estate. We are funded for our capital programme through the national development plan and we have a number of projects nationwide that we would like to see done. We had a board meeting last week. In relation to Tralee, we will see work starting for the pre-planning process that we have to do. There is an amount of preliminary work that has to be done under the infrastructure guidelines. We will see that work start for a number of courthouses nationwide.

Senator Anne Rabbitte: My question relates to the comment that over 1,000 people were released after 24 hours and there possibly could be repeats. Has the Courts Service or the Prison Service ever looked at assistive technology to support people who have trauma? I touched on trauma earlier on. For a lot of repeat offenders it all started with childhood trauma.

Ms Saoirse Brady: We see this particularly in women's prisons but also in men's prisons. Those therapeutic supports are essential. We do not have a situation at the moment where everyone in prison - particularly those in for short periods of time - can access the therapeutic supports they need or even get assessed to see if they have experienced that trauma.

I will, however, give a couple of examples of really good things that are working. There is a Traveller mothers in prison project in the Dóchas Centre for women. It deals with this issue. It works with Traveller women whose children may be in State care or with family members, or they may have their baby with them because that is an issue that is happening more and more in prisons, unfortunately. What they are discovering in those discussions is that women did not know what domestic violence was. They thought it was something that happened to the general public. They did not know what trauma was either. Many of them have experienced homelessness and for the first time are seeing themselves as mothers because of the work Barnardos is doing with them. Supports like this can really help if they are properly funded and particular groups of women or men are given dedicated one-to-one supports in addition to group therapy sessions.

In terms of technology, the prison system is overstretched at the moment. We were in Mountjoy a few weeks ago. We saw that it has video booths. I think there are 16 of them. They are going to be used for court appearances. We would like to see them used more for family contact. There is a commitment in the Prison Service's strategic plan about trying to roll out more supports using video technology. It happened more during the pandemic and was successful. It means that children do not have to go into a high-security prison setting which can often traumatise them.

We recently published a book by children of prisoners for children of prisoners. I have a copy I will give the Senator afterwards. She might be interested in it.

There are things that could be done. What we really need to do is reduce the number of people going into prison for mental health issues. That is happening more and more. One of the things we talk about in our pre-budget submission, which I urge members to read, is diversion from prison. It works really well in Cloverhill. There is a model there whereby the prison in-reach and court liaison service has diverted two prison-loads of people from prison. We need to see that replicated throughout the country. It has been recommended by the Office of the Inspector of Prisons. The previous Government's mental health and addiction task force also talked about rolling it out nationwide. Those are the types of things that would really help to reduce the number of people in prison for mental health issues in particular.

Senator Garret Kelleher: I want to take up some of the answers to the questions that Ms Behan raised rather than her opening statement which I found very stark. I thank her for the contributions she has made throughout the meeting. She spoke about how crucial counselling and therapy was to her survival and that she would not be here today if was not for that. She also said that she would not have gone to therapy in the first place if she had known that the intimate details of what she discussed with her therapist could be disclosed and used against her. That is at the core at what we need to get right. We need to have a victim-centred approach in the criminal justice system. Victims of crime need to have confidence and feel supported rather than feel fear in the perpetrator-friendly justice system that Ms Behan spoke of. This is something that we need to get right.

In her opening statement Ms Behan also mentioned that the three minutes she was given were nowhere near adequate to get across the points she wanted to raise. Is there anything else she would like to add to what she has already said?

Ms Hazel Behan: For members and anyone in a position to bring meaningful change to our legislation, it is important to listen. With the greatest of respect to organisations and people working in professional capacities, I hugely admire what you are doing but you are not, I hope, in the same shoes as me and other women sat here today. You do not know. We do; ask us. We want to tell you. We want to share our stories with you so you can do better. We are not here for fun. It does not do much for me to let everyone in the world know what happened to me but it happens every single day. I want you to think. I could be you. I could be your daughter, sister, mother or friend. Based on statistics, everybody in this room knows somebody, even if they have not been made aware of it, who has been a victim of rape or gender-based violence.

Would you like for them to be treated that way? Would you like for them to be picked apart in court, their inner thoughts used against them, everything they are doing to try to better themselves following the most unthinkable crime committed against them? Would you like that for them, for somebody that you loved? I highly doubt it, so I am asking for you to consider that and really listen to other victims of crimes like that, not just me. My point is important but everybody's point is important. We all have something to say and I encourage the committee to invite other victims, survivors and therapists and listen to what they have to say.

Senator Garret Kelleher: I thank Ms Behan very much.

An Cathaoirleach: I thank Senator Kelleher. We have been limited in time but I get a sense the impact has been fairly profound. I propose we publish all the opening statements on the committee's website. Is that agreed? Agreed.

On behalf of the committee I thank all the organisations and bodies that came before us. I appreciate it was difficult dealing with such a myriad of different issues but unfortunately those are the circumstances in which the committee has been forced to deal with all that. You are all professional advocates and important people in your own right and that showed in the evidence you presented and the concise way in which you answered your questions.

Ms Behan, of course, is not a professional. This committee set out at a very early stage that we would try, as well as hearing from experts and people working in particular fields, to ensure we had human voices and people with real life experience. The decision of the committee to pursue that has been very much vindicated by your presence and I hope all other victims and people with a concern about this area consider you have been a very strong voice for all them, because certainly I think that is the view of this committee. I sincerely thank you for doing that. The officials from the Department got off lightly. I hope they understand that will not happen again.

I ask the committee's agreement to go into private session as we have a number of housekeeping matters to deal with. Once again a special thank you to all our visitors in the Gallery for being here for what was, for a number of you, a very stressful and retraumatising experience, in that you had to listen to people talk about your rights. The committee will be producing a report and I hope that will vindicate those rights and your presence today. Go raibh míle maith agaibh go léir.

The joint committee went into private session at 5.13 p.m. and adjourned at 5.35 p.m. until 3 p.m. on Tuesday, 14 October 2025.