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SURVIVORS HEALING FROM DOMESTIC ABUSE AND SEXUAL VIOLENCE

The Disclosure & Use of Victims' Counselling Records in Sexual Offence Trials

Beyond Surviving update for our Community: Your Voice Matters, Understanding the proposed legal Changes regarding Counselling Records

Survey Period

6th - 9th June, 2026

Prepared by

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Dear Members,

Many of you will have seen recent discussions about **the disclosure of counselling records in sexual offence trials**. This is a complex legal issue that has generated strong feelings among survivors, advocates, legal professionals and policymakers.

We know from our own **community** that survivors hold a wide range of views on this issue, shaped by their own unique experiences and perspectives. There is no single survivor view.

The purpose of this update is to provide a simplified overview of:

- the current law;
- the changes being proposed; and
- the concerns that have been raised by survivor advocates and support organisations.

We are **greatly simplifying a complex legal issue** so that it is more accessible. This is not intended to be legal advice or a comprehensive analysis of the law.

At Beyond Surviving, we believe survivors deserve clear, accessible information (a right too often denied to us) and meaningful opportunities to shape the conversations that affect them. Before we take any position on these proposals, **we want to hear directly from you**. Your views will help shape our next steps and determine the position we take as an organisation.

Let's get informed!

1. What is the Current Position?

The disclosure of counselling records in sexual offence trials is governed by **Section 19A of the Criminal Evidence Act 1992**, which was introduced in 2017.

Under this current law:

- Either the defence or prosecution can apply to access a survivor's counselling records.
- They must **explain the reasons why** the records are likely to be relevant to the trial.
- The judge must **hold a hearing** to decide whether the records should be shared.
- The survivor has a right to be heard during that hearing.
- The judge must balance a range of factors, including:
    - the **accused's right to a fair trial**;
    - the **survivor's privacy rights**; and
    - the **public interest** in encouraging people to report / seek counselling.

Crucially, the law allows survivors to **"waive"** their right to a hearing if a survivor agrees to the notes being handed over directly to the legal teams.

This law was introduced to protect survivors. Before 2017, there was no law governing disclosure, meaning legal teams could, on the basis of the accused's constitutional right to a fair trial, "fish" through a survivor's entire therapy records and find any information that could be used to pick apart their story or their character. S.19A meant for records only to be shared if genuinely relevant.

1. What is the Current Position? (cont'd)

The problem is that s.19A has failed in practice. This is for a number of reasons:

- **Broad drafting**: the law allows notes to be shared if it is in the "interests of justice", which is open to very wide interpretation by legal teams.

- **The "Waiver" Loophole**: in reality, many survivors felt pressured into consenting to the above waiver, to avoid lengthy delays to their trial.

- **Practice**: because there was no legal "presumption" that the records are private, it became a standard part of any investigation to routinely ask for these.

"The law at present is unacceptable and needs to be changed." - Minister Jim O' Callaghan *- Source: Radio interview with Claire Byrne and Minister Jim O' Callaghan on the Claire Byrne Show, 05 Feb, 2026*

2. What impact does this have on survivors?

For many survivors (**87%** respondents of our **survey** of over 300 survivors), counselling is a vital part of healing and recovery.

Many described the possibility of counselling records being examined in court as deeply distressing. Organisations have repeatedly raised concerns that the current law can:

- create fear around seeking counselling: **70.85%** of you said the potential use of notes by the defence would change how you engage with therapy.
- discourage survivors from reporting offences (**35%** of survey respondents);
- contribute to feelings of re-traumatisation during the court process; and
- undermine confidence in the criminal justice system.

At the same time, experiences are not universal:

- **6.10%** survivors report that counselling records assisted the prosecution in their case by documenting disclosures made over time or demonstrating the impact of trauma.
- Others believe they should retain the choice to consent to disclosure if they feel it may support their case.

3. What changes have survivors and organisations been calling for?

After years of survivors and organisations including the Dublin Rape Crisis Centre (DRCC) and Rape Crisis Ireland (RCI) campaigning for stronger protections, Minister for Justice Jim O'Callaghan acknowledged that the system is *"unacceptable"*.

The Chain of Events

May 2025

The Government approves the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025, the first Government proposal to reform the current system governing the disclosure of counselling records at trial.

13th Nov 2025

The Oireachtas Justice Committee completes pre-legislative scrutiny of the 2025 Bill. Survivors, rape crisis centres and therapists gave submissions, and the Committee unanimously recommended a complete ban on the disclosure of counselling records in sexual offence trials, going further than the Government's original proposals.

Late Nov 2025

Survivor advocates and organisations continued campaigning for stronger protections, some calling for a total ban on the disclosure of counselling records.

Dec 2025

The Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026 is published. Survivor organisations expressed concern that it did not introduce the protections they sought, and begin advocating for significant amendments at Committee Stage.

Jan 2026

The Attorney General advises that a blanket ban would likely be unconstitutional because it could interfere with the accused's constitutional right to a fair trial and the presumption of innocence.

In response, the DRCC and RCI call for a different approach: a legal presumption of non-disclosure, meaning counselling records would be presumed private unless a judge determined that disclosure was genuinely necessary to avoid an unfair trial.

22nd Jan 2026

Following this, Minister for Justice Jim O'Callaghan announced that he would introduce amendments, including the introduction of a presumption of non-disclosure.

May 2026

The Government introduced amendments to the Bill (see below). This is now the latest version proposed to be brought in as law.

10th Jun 2026

Dáil debate regarding the 2026 Bill is scheduled.

We are here!

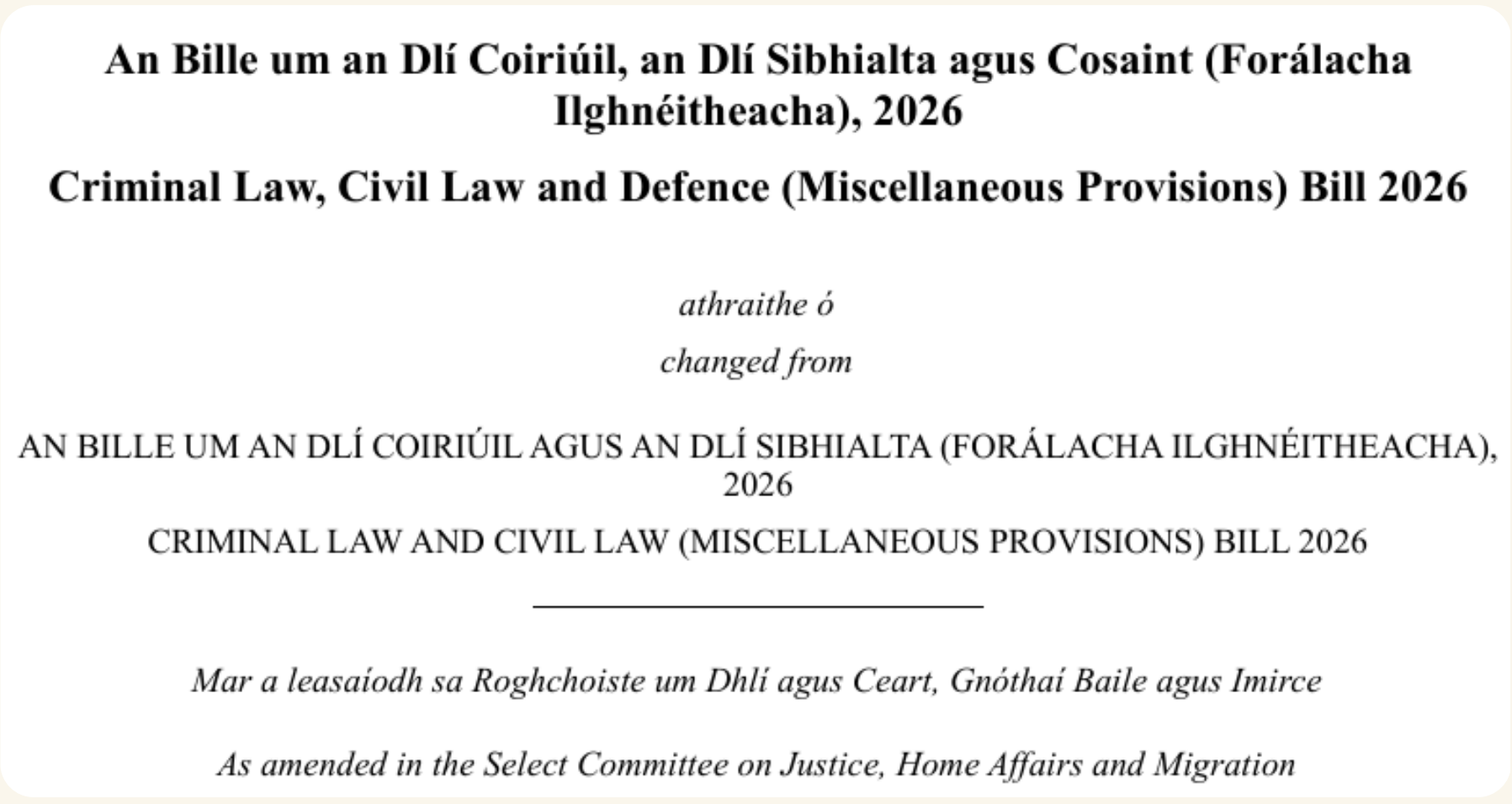
4. What does the new 2026 Bill propose?

The new Bill, as currently drafted, would make a number of changes to the current law, including:

- **Ending the "Waiver"**: under the current law, survivors can waive their right to a disclosure hearing. The Bill would remove this option and require a mandatory hearing in every case.

- **A new two-step process**: A judge will first consider whether there is a basis for seeking the notes. If the judge thinks the records might be relevant, a full hearing will proceed.

- **Broader protection for sensitive records**: The law would not only apply to counselling records, but also to personal records like medical, social work, and child protection records.



An Bille um an Dlí Coiriúil, an Dlí Sibhialta agus Cosaint (Forálacha Ilghnéitheacha), 2026

Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026

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AN BILLE UM AN DLÍ COIRIÚIL AGUS AN DLÍ SIBHIALTA (FORÁLACHA ILGHNÉITHEACHA), 2026

CRIMINAL LAW AND CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2026

Mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart, Gnóthaí Baile agus Imirce

As amended in the Select Committee on Justice, Home Affairs and Migration

Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026 - Source

5. Why do some organisations believe the Bill falls short?

While welcoming some improvements, organisations such as DRCC and RCI, as well as political parties and advocates have expressed concerns that the Bill does not fully reflect what was publicly promised. The concerns raised include:

- **No "Presumption"**: the Minister publicly stated that a presumption of non-disclosure would be introduced, however the word "presumption" does not appear in the Bill at all.

- **Broad legal language remains**: the Bill continues to rely on broad legal concepts (e.g. the "interests of justice") which caused s.19A to fail in practice. (See Section 1 above).

- **No clear threshold for requests**: the Bill requires “reasons” to be provided for the disclosure request, but does not set any “test” or threshold for those reasons, meaning requests may continue to be made too routinely rather than only where genuinely necessary to a fair trial.

- **Lost Survivor Agency:** By removing the "waiver," the Bill takes away a survivor's choice to consent to disclosure even if they believe it would help their case.

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Share Your Perspective..

Your voice matters, and every voice carries equal weight

After years of advocacy by survivors and support organisations, this issue is now firmly on the political agenda and legal change is within reach. While there are differing views on whether the current proposals go far enough, any reform must operate within constitutional limits, including the accused person's right to a fair trial. The decisions made in the coming weeks could shape how survivors' counselling records are treated for years to come. That is why **your voice matters now**.

Take the Short Survey

Please let us know your view:

Q: I support the Bill as proposed by the Minister for Justice as it is currently written.

◯ Yes ◯ No ◯ I don't know

Q. I believe the proposed amendments and recommendations do not go far enough to protect survivors, and needs the following additions/ updates: [please add your comments in section 5].

◯ Yes ◯ No ◯ I don't know

Q. I believe this needed further consideration and thought, however, I recognise that delaying now risks, not only losing momentum, but also leaving survivors waiting longer for change.

◯ Yes ◯ No ◯ I don't know

Take the Survey

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Your lived experience is the expertise that must shape these laws.

Thank you for helping ensure that survivors' voices, perspectives and experiences are at the heart of this conversation.

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