

Child Sexual Abuse

In August of 1990 the Commission submitted to the Attorney General a [Report on Child Sexual Abuse \(LRC 32–1990\)](#). It embodies the results of an examination of, and research in relation to, legal problems arising in this area, together with the Commission's proposals for reform.

In the course of its lengthy examination of the topic dealt with in the Report, it became obvious to the Commission that the issues raised were by no means confined to the criminal law, but extended over a wide area of law, both civil and criminal. Its examination proceeded on the basis that no single source should be exclusively relied upon from which to derive general findings about the nature of child sexual abuse and the precise requirements of law reform. The approach throughout the Report is to adopt a balanced interdisciplinary perspective. Recognising that a solid foundation of fact was a prerequisite to the reform of the law in relation to child sexual abuse the Commission endeavoured, within the financial and practical means at its disposal, to obtain as much basic and applied data on child sexual abuse as possible. As well as collecting relevant research information, the Commission sought opinions and endeavoured to gain some practical experience on such matters as the credibility of children as witnesses and children's reactions to court involvement. It also attempted to identify the practical problems experienced by victims and their families, as well as by health and social workers, the Gardai, the Director of Public Prosecutions and the courts. To this end, it supplemented its research into substantive and comparative law reform by consultations with practitioners in the areas of health, child care and law enforcement, as well as with the families of some victims of child sexual abuse. It also received a number of letters from individuals directly affected by child sexual abuse and briefs from professional associations and other interested groups.

The results of the research were contained in a [Consultation Paper published by the Commission on Child Sexual Abuse in August 1989](#). A wide range of written submissions was received relating to various aspects of the Consultation Paper and, in addition, a Seminar was held at the Law Society premises in Blackhall Place on 25th November 1989 which was attended by 124 people, including judges, lawyers, doctors, psychologists, social workers, officers of the Departments of Health and Justice and of various health boards, and representatives from the offices of the Director of Public Prosecutions and the Chief State Solicitor's Office.

Some features of the proposals contained in the report require special mention. It has already been indicated, in paragraph 5, that, while the Attorney General's reference to the Commission was of “sexual offences generally”, emphasis was placed on rape and the sexual abuse of children. It became obvious, however, to the Commission at an early stage that no sensible proposals for the reform of the substantive criminal law in the area of child sexual abuse could be formulated unless it was prepared to undertake an examination of the entire law relating to what might be broadly described as consensual sexual activity. That in turn led the Commission to examine the present state of the law as to consensual homosexual offences in the light of the decisions of the Supreme Court¹ and of the European Court of Human Rights in *Norris*.²

In the context of the civil aspects of the problem, particular attention was given in the Report to the provisions of the Child Care Bill 1988 which, at the time of the presentation of the Report to the Attorney General, had completed its committee stage in Dail Eireann. A number of proposals

in the Commission's Consultation Paper on the subject, published in 1989, had already been embodied in the Bill during its progress through the Oireachtas. The Commission also, however, recommended in the Report appropriate amendments which it considered might usefully be made to the Bill.

The Commission's recommendations on the subject are wide-ranging. Among the more significant are the following:

- (a) the imposition of a legal obligation on doctors, psychiatrists, psychologists, health workers, social workers, probation officers and teachers to report cases of suspected child sexual abuse;
- (b) conferring on the District Court power to authorise a health board to arrange for the medical examination and other assessment of a child where the level of suspicion of abuse is sufficiently high;
- (c) the extension of the remedies of barring orders and protection orders so far as concerns those eligible to seek and those liable to be made the object of these orders;
- (d) the creation of an exclusion order, to apply in an emergency situation, as an alternative to an emergency care order;
- (e) reformulation of sexual offences relating to consensual activity with young persons;
- (f) the creation of a new offence of “child sexual abuse” or “sexual exploitation” to replace the present offence of “indecent assault with consent”
- (g) the repeal of sections 61 and 62 of the *Offences Against the Persons Act 1861* and section 11 of the *Criminal Law (Amendment) Act 1885* and the application of the proposed offence of “child sexual abuse” to homosexual as well as heterosexual activity;
- (h) the retention of the criminal prohibition of anal penile penetration of boys and girls up to the age of 17;
- (i) with regard to the law of evidence (*inter alia*):
 - (i) making the test of competency of children that of the capacity to give an intelligible account of events that have been observed;
 - (ii) dispensing with the requirement placed on the judge to warn a jury before they convict on the sworn evidence of a child, and the requirement of corroboration of the unsworn evidence of the child;
 - (iii) rendering expert evidence admissible as to competence and as to children's typical behavioural and emotional reactions to sexual abuse;
 - (iv) using closed circuit television (or, if unavailable, a screen)

where the witness in a case of child sexual abuse is under 17;

- (v) using in trials on indictment the video-recorded deposition in the District Court of a witness under 17;
- (vi) the admission in evidence of a video-recorded interview with a child recorded out of court by an appropriate person (e.g. an appropriately qualified child examiner, a doctor, a psychologist, a Ban Garda or a social worker), provided the child is made available for cross-examination;
- (vii) the appointment of an examiner, in a child sexual abuse prosecution, on the application of the DPP, for special reasons, the function of the examiner being to channel to the child the questions of the defendant or counsel or solicitor in cross-examination;
- (viii) dispensing with the preliminary examination in the District Court in cases which are not being dealt with summarily, while reserving to the accused the right to a preliminary examination by the court of trial of the issue as to whether there is a *prima facie* case;
- (ix) the entitlement to use anatomical dolls and other demonstrative aids to testimony.