

Child Sexual Abuse

In August 1990 the Commission published its Report on [Child Sexual Abuse \(LRC 32–1990\)](#) which built on its [Consultation Paper on Child Sexual Abuse \(LRC CP 2-1989\)](#) and followed from a 1987 request by the then Attorney General.

The approach throughout the Report was to adopt a balanced interdisciplinary perspective. It became obvious 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*. The Commission recommended in the Report appropriate amendments which it considered might usefully be made to the Bill.

Among the recommendations made by the Commission were 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.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Child Care Act 1991*; *Criminal Evidence Act 1992*; *Criminal Law (Sexual Offences) Act 1993*; *Domestic Violence Act 1996*; *Criminal Justice (Miscellaneous Provisions) Act 1997*; *Protection for Persons Reporting Child Abuse Act 1998*; *Criminal Justice (Withholding Information on Crimes against Children and Vulnerable Persons) Act 2012* and *Children First Act 2015*.