# **Introduction CJS & VWD**

Victimology has received increasing attention in criminological circles and in the criminal law.[[1]](#footnote-1) Recent legislative changes[[2]](#footnote-2) to the **criminal justice system** (‘**CJS’**) in Ireland reflect this shift in focus. However, this dissertation will argue that while the interests of the overall group of victims has come into popular discourse, there is a dearth of analysis and study into a particular subgroup of victims - victims of crimes with disabilities.[[3]](#footnote-3) Moreover, a lack of critical commentary has been particularly acute in Ireland, until the recent publication by Kilcommins *et al* which provided an examination of the current academic literature in the area, and pointed to structural changes to be made.[[4]](#footnote-4) They highlighted areas requiring more investigation including the need for a qualitative analysis of the experiences of **victims with disabilities** (‘**VWD’**) in their dealings with the CJS.[[5]](#footnote-5) This study, building on the foundations laid by Kilcommins *et al*., attempts to understand the particular difficulties VWD face in the criminal justice process. The study undertakes socio-legal research based upon direct engagement in the form of interviews with victims who have disabilities.

A common theme running through the discourse, as unearthed in the literature review, is the identification of barriers to justice, but this phenomenon has yet to titled. This dissertation, in its concluding segments will put forward the hypothesis of ‘tertiary victimisation’ where the interaction of having a disability with the CJS results in a unique victimisation or suffering experience for VWD.[[6]](#footnote-6) The segments preceding that will discuss the unique factors that contribute to this experience of ‘tertiary victimisation’.

Section A. begins with a discussion of why the issue of disability has been largely ignored in victimology. Specific victimological issues to the disability community relating to the crime itself are unearthed in section B. The victim’s experience of reporting the crime, the trial stage and post-CJS experiences are dealt with in sections C. to E. respectively. The dissertation progresses from theoretical claims made in the literature, in sections A. and B., to the more specific issues experienced on-the-ground by the victims themselves in sections C. to E. The dissertation then proceeds to the critical commentary in section F., where the most topical and controversial issues are analysed and recommendations made. The recommendations in summary relate to training, enhanced communication between the CJS agencies, a formal representative, adherence to statutory requirements and more generally a more expansive approach as regards flexibility of rigid court rules.

## Aims and Objectives

Essentially this dissertation strived to discover:

* whether, in reality, VWD do indeed face barriers which inhibit their access to justice;
* what those barriers are;
* whether the Irish CJS makes adequate reasonable accommodations to ensure that VWD receive access to justice on the same level as their non-disabled counterparts; and
* how such barriers can be removed or addressed.

## Research Methodologies

The research conducted for the dissertation was a two-step process.

*Phase 1*

The literature review was conducted between September 2012 and December 2012. The literature review discovered the existing contributions in the area as well as its strengths, weaknesses and gaps. Given the expansive review undertaken by Kilcommins *et al*, the literature review conducted for this dissertation was largely confined to literature dealing with VWD in an Irish context only. However, during the composition of the dissertation, the author drew upon international primary research and commentary to help shed light on certain areas are anecdotally effecting the criminal justice process for VWD, but that remain unexposed academically and statistically in Ireland.The literature review helped focus the subsequent research, ensuring that study does not merely replicate the existing body of knowledge. More importantly, it allowed for the current theoretical claims to be tested in practice during qualitative interviews.

The literature review confirmed that there is little by way of academic commentary or raw data in this area in Ireland. While some elements of the findings based upon the Case Studies confirmed what appears in the literature, a limited number of elements challenge the consensus therein.

*Phase**2*

The primary data in this dissertation is based upon three face-to-face semi-structured interviews (the **Case Studies**) conducted with victims of crimes who have disabilities. By interviewing the VWD themselves, the study goes beyond the current body of literature in Ireland that is confined to desk-bound research. The semi-structured interview method is qualitative in nature. This qualitative type of investigation is popular in victimological and criminological circles[[7]](#footnote-7), and was chosen to allow for the gathering of detailed information in a formal planned way, while allowing for exploration on the unique feelings, perceptions and emotions on sensitive topics.[[8]](#footnote-8) The dissertation uses these three illustrative cases not as representations of all cases (given the small sample size), but to examine if the theoretical points identified by Kilcommins *et al* and other academics, are borne out in reality as experienced by the victims themselves.

Participants were recruited by contacting all known victims’ interests/rights groups in Ireland via emails (Appendix 1) with a proposal (Appendix 2) requesting that any eligible participants (namely victims who used the service who had a disability) be notified of the request for participants. Gaining access[[9]](#footnote-9) to the three participants was facilitated in this regard by the gate keepers.[[10]](#footnote-10) Information was provided on the research motivations and focus as well as a copy of the consent form. Contact was then made directly with the willing and voluntary participants via email and subsequently through a phone call. Participants were put at ease in regards to the purposes of the research, confidentiality and the process involved. A date, time and location was agreed that suited the participant. A schedule of questions was sent in advance to the participant. The schedule was designed to reflect the progressive narratives of a criminal case, and covered the following thematic areas: General/introductory, the crime itself, reporting, court, evidence, concluding/evaluative. The questions themselves tended to be open-ended to allow for elaboration (Appendix 5).[[11]](#footnote-11)

Given the difficult nature of any victim’s experience, along with the more complex issues associated with interacting with the CJS as a victim who has a disability, a specific strategy based upon the ‘no harm’ principle[[12]](#footnote-12) was undertaken which involved a number of measures. The author followed both the Trinity College Dublin Policy on Good Research Practice[[13]](#footnote-13) and the National Disability Authority’s Ethical Guidance for Research with People with Disabilities.[[14]](#footnote-14)

1. Awareness of ethical considerations
	1. Informed Consent[[15]](#footnote-15) forms were issued to each participant (Appendix 4)
	2. An information sheet with the contact details of other support organisations was provided to the participants at the end of the interview, given the sensitive and emotional nature of the interview (Appendix 3)
	3. The presence of a representative in the room from the victims’ organisation was facilitated for if so desired by the participant, including a counsellor for one particularly sensitive interview
2. Confidentiality[[16]](#footnote-16)
	1. The interviews were facilitated by certain victims’ organisations who wish to remain anonymous, as do the victims themselves. For the purposes of anonymity facts are only revealed in the dissertation for the purposes of supporting argument. All of the participants have been de-identified by making their narratives gender neutral and by not using names, locations etc.
	2. Permission was received from the participant to breach the confidentiality agreement in the event of fears around the safety of the participant or another person.[[17]](#footnote-17)
3. Storage of Transcripts (written and audio recordings)

 The transcripts of the interviews are in the possession of the author, and have been maintained in accordance with the Data Protection Acts 1998-2003.[[18]](#footnote-18)

* 1. The transcripts have been stored in locked cabinets
	2. The electronic audio recordings[[19]](#footnote-19) have been maintained in encrypted files on a computer
	3. The transcripts will be stored for two years

Following completion of the interviews and transcription of the responses *verbatim*, the data was analysed on a thematic bass which allowed for patterns to emerge, and conclusions and comparisons to be drawn.

## Possible Limitations of the Study

For the purposes of scientific objectivity and to account for any subjective bias on the part of the researcher, an attempt is made here to be critically aware of any possible limitations of the study.

* This study consists of interviewing the victims only, and the subjectivity of the participants’ accounts are rooted in personal subjective experience and interpretation. Although the CJS personnel whose actions are reported in this study have not been contacted for reasons of practicality (timing and resources), the narratives of the VWD nonetheless provide a valuable insight into the lived experience of VWD that has yet to be explored in the Irish literature.
* The scale of the study is relatively small. However, as is the case with any qualitative study, sample sizes tend to be significantly smaller than a quantitative study, although this may restrict the drawing of conclusions for all cases. The author would advise for future studies to be conducted on a broader scale both qualitatively with a larger sample base and quantitatively. The current study did allow for an in-depth discussion with a smaller number of participants which unearthed experiences that may have gone undiscovered in a larger quantitative study.

## Case Studies

Before delving into the substantive issues of the dissertation, the facts of the Case Studies will be briefly set out to provide contextual background. The study encompasses different sexes, disabilities and crimes.[[20]](#footnote-20)

* Case Study 1:

The crime involved was homicide. The homicide victim had a physical disability. The secondary or co-victim[[21]](#footnote-21), whom the interview was conducted with, had an intellectual disability.

* Case Study 2:

The victim with a physical disability was attacked in the street verbally and physically.

* Case Study 3.

The criminal behaviour in question was assault, in the nature of child abuse.[[22]](#footnote-22) The disability in question was physical in nature. The case proceeded to trial.

## Disability

It is also prudent at this early stage to consider what we mean by ‘disability’. The term ‘disability’ has numerous meanings in society and in certain legal instruments.

While the term ‘disability’is broadly defined in Irish law, covering a wide range of impairments and illnesses, its definition in the Disability Act 2005 and in particular in the Equal Status Acts, is based upon the medical model understanding of a disability.[[23]](#footnote-23) We can see the impact of understanding disability from this point of view in the reactions by CJS personnel in the Case Studies.

A more preferential and inclusive definition is that used by the UN Convention on the Rights of Persons with Disabilities[[24]](#footnote-24) (**UNCRPD**), which states that “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”[[25]](#footnote-25) This definition is not exclusionary, as it only lists possible non-exhaustive examples of types of disabilities and takes a social model view of disability.[[26]](#footnote-26) Under the ‘social model’ it is society’s response to the label of disability that is disabling. The disability is only inhibitive if society does not adequately accommodate for their disability.[[27]](#footnote-27)

## Victimology

We have already stated that this study is within the field of victimology. Victimology has its origins in, and is a sub-field of, criminology.[[28]](#footnote-28) It is also a relatively new field of academic study, it is only since the 1980s that “criminology has begun to pay considerable attention to victims of crime.”[[29]](#footnote-29) Victimology looks at the nature and impact of crimes, but from the perspective of the victim, not the perpetrator.[[30]](#footnote-30) It uses similar models and approaches from the sociological and legal frameworks of criminology to understand why certain people or groups of people are victimised. The field is moving to seek to understand the experience of being victimised.

# **Why the Needs of Victims with Disabilities are not fully appreciated in Victimology and in Society**

Given the lack of empirical and academic research into VWD to date in Ireland, VWD continue to remain a category of hidden victims, as is evidenced by underreporting identified in the literature.[[31]](#footnote-31) VWD have been described as “something of a ‘Victimological Other’: they have not traditionally been seen as victims of crime, and there has been little recognition of how they may experience crimes differently to other groups.”[[32]](#footnote-32) How is it that despite the rhetoric of pity and vulnerability towards the disability community[[33]](#footnote-33), do its most vulnerable members (those with disabilities who are victims of crimes) fail to receive the attention they deserve? This issue is discussed initially to provide a context to the overall discussion on the barriers VWD face.

Beyond victimology, a wider societal ignorance of disability has existed in Irish society. For instance, people with disabilities have had a tendency to experience discrimination and a denial of rights.[[34]](#footnote-34)

Language and the ability to enter discourse is the currency of change and power in modern Irish society that would allow for the overcoming of such discrimination. The ability to be seen and heard will determine if one’s cause is brought onto the political and societal agenda for change. A history of institutionalisation[[35]](#footnote-35) has essentially left those with disabilities voiceless in society. This ‘voicelessness’ takes a more literal and extreme form in a legal context and environment.[[36]](#footnote-36) Examples include the removal of capacity under the Ward of Court system and the ability to act as a witness, which prohibit access to avenues of expressing themselves of their interests in the societal legal framework. The relatively recent de-institutionalisation and improvements in providing a voice to the disability community (through self-advocacy[[37]](#footnote-37), advocacy[[38]](#footnote-38), the media to a certain extent[[39]](#footnote-39) and limited legal changes[[40]](#footnote-40)) has halted this phenomenon somewhat and explains why only now an interest has begun in this area.

The author believes that the disability community, in relation to discrimination and lack of interest, has experienced a similar plight to that of feminism. Societal rules and laws are created, decided upon and implemented largely by non-disabled men. “This is problematic for groups who do not occupy similar subject positions, and who as a result may find themselves discriminated against in their treatment by the criminal justice system.”[[41]](#footnote-41)A historical lack of awareness, an inability to believe and lack of empathy by the majority and powerful in society towards the issues of marginalised groups (such as domestic abuse, institutional abuse and crimes against those with disabilities), has resulted in restriction on the right of access to justice.

We will discover how those with disabilities can often be perceived as vulnerable and as an ‘ideal victim’by perpetrators at the commission stage. Contrary to this, in relation to the societal and expert discussion of their issues, the author agrees with Edwards who argues that people with “disabilities do not necessarily fit notions of the ‘ideal victim’ (*from society’s perspective*): they are sidelined in victimological discourse.”[[42]](#footnote-42) Ordinarily, “some victims, for example, are seen as more deserving than others based on their perceived vulnerability”.[[43]](#footnote-43) This does not reflect the reality in the case of people with disabilities, one of the most vulnerable groups in society, yet they are not afforded adequate attention in the victimology sphere. Perhaps the explanation to this problem lies in labelling theory[[44]](#footnote-44)- in the stereotypical image of a person with a pre-existing disability as being already vulnerable and helpless. They are defined by the foremost label of disabled, not defined by the ordinary label victim like all non-disabled victims. Society fails to consider any relevant issue to those with disabilities, outside of their fundamental defining identity problem of being ‘disabled’.[[45]](#footnote-45) Labelling[[46]](#footnote-46) as such, acts as a key factor in the lack of academic and media interest in VWD.

Finally, disability fails to be raised as a substantial concern for victimology, due to the fact that victimology itself is a relatively new discipline.[[47]](#footnote-47) Victims rights’ organisations have struggled to get victims’ interests generally on the political and legal reform table. The victims’ rights movement has not risked putting forward problems that pertain to such a limited sub-group of its members. ­

The lack of attention by society and victimology to the interests of VWD is reflected in a corresponding lack of attention by the criminal law, which exists in both the inadequacy of traditional victims’ statutory measures to VWD, and also in the shortage of provisions specific to VWD.[[48]](#footnote-48) Firstly, as we will discover, it appears the following measures currently in place are insufficient when it come to thevictims who have disabilities:

* Victim Impact Statements[[49]](#footnote-49) - concerns were raised in Case Study 3 as to the likelihood of those with disabilities being allowed to take part in that process;[[50]](#footnote-50)
* Victim compensation[[51]](#footnote-51) - there is currently no explicit obligation for the disability to be taken into account when assessing the level of compensation. This is despite the increased likelihood that the impact of a crime tends to be more severe if one has a disability, for example exacerbation of a disability;
* The Victims Charter - it was found not to be adhered to in all instances in the Case Studies); and
* The Commission for Support of Victims of Crime - there no specific organisation, funding, or policy to deal with VWD.

Secondly, there is a shortage of provisions that explicitly deal with the interests and protections of VWD with the exception of the Criminal Evidence Act 1992. Those legislative provisions that do deal with disabilities pertain to intellectual disabilities and are often grouped together with children.

# **The Crime Itself**

Having said that, there is a growing recognition of the unique issues faced by the disability community during their interaction with the CJS.[[52]](#footnote-52) One such area is the circumstances in which, and the nature of, the crimes committed against the disability community.

## Incidence

Internationally and domestically it has been proven (through empirical research) that certain factors associated with people with disabilities mean they are more at risk of becoming victims and proportionately experience more actual victimisation than the wider population, as illustrated by the three Case Studies.[[53]](#footnote-53)

Although overall rates of crime have declined in recent times, the 2010 Central Statistics Office survey provides no breakdown of the data detailing the instances of crime against the disability community, so we are unaware as to the extent this trend applies amongst the disability community.[[54]](#footnote-54) The true prevalence of crime against those with disabilities will remain an unknown if national crime statistics continue to ignore the issue of disability. The UNCRPD, under Article 31, if ratified, will place an obligation for the collection of disability data on the government and public institutions. However, even if data was gathered on the relationships between victimisation, crime and disability, (if the problem of underreporting persists[[55]](#footnote-55)) the statistics may remain inaccurate.

Internationally it has been found:

* Those with disabilities are significantly more likely to be victims of crime than non-disabled people.[[56]](#footnote-56)
* 4 in 10 people with a disability suffered violence.[[57]](#footnote-57)
* “(V)iolence affects three times as many disabled people as the rest of the population.”[[58]](#footnote-58)
* In the US, violent crime rates against those with disabilities was twice that of the general population.[[59]](#footnote-59)

A cautionary note on the above statistics should be made – note that 3 of the sets of empirical data referred to above relate to violent crimes. Indeed the three cases studies relate to either sexual[[60]](#footnote-60) or violent crimes, and perhaps this indicates that that those with disabilities are more susceptible to crimes of a sexual and violent nature in particularly.

Risk factors associated with some disabilities which increase the chance of sexual victimisation[[61]](#footnote-61) occurring include communication skill deficits where consent[[62]](#footnote-62) can be difficult to ascertain, and a lack of mainstream education (43% of those with disabilities have not progressed beyond primary education[[63]](#footnote-63)) particularly sexual education.[[64]](#footnote-64) In relation to crimes of violence, we will see that the issue of hate crime is a major factor that influences crimes of a violent and severe nature to be committed against those with disabilities.

But what are the explanations for high rates of victimisation generally?

Three major reasons for the committal of crimes against people with disabilities that cropped up during the primary and secondary research were vulnerability, ‘ideal victimhood’ and dependency, all of which are interrelated. Separate stand-alone reasons also exist.

### *Vulnerability*

The perceived or actual vulnerability of persons with disabilities both play a part in explaining the high rates of victimisation for those with disabilities in relation to all types of crimes. While those with disabilities are not inherently vulnerable[[65]](#footnote-65), some risk factors do heighten their vulnerability to crime depending on the individual circumstances such as the type and severity of disability.

Perceived vulnerability may be more likely to occur in the case of a visually apparent disability (Scenario 1 below). Actual vulnerability is more likely if the nature of the disability is known personally to the perpetrator (Scenario 2 below). Actual vulnerability can be reflected in the position where some people with disabilities are under the care of another adult. For example the family or carer of a person with a disability will know the limits of a person’s capabilities to fight back, or to report crimes.[[66]](#footnote-66)

### *Ideal Victim*

One characteristic of the ideal victim identified by Christie[[67]](#footnote-67) is that they are perceived as vulnerable. Part of the increased risk of victimisation for VWD is that visually apparent disabilities make a potential victim stand out more[[68]](#footnote-68) and are perceived by the perpetrator as an ‘ideal victim’. The author proposes that this concept of the ‘ideal victim’ appears to apply to VWD when it comes to the commission of crimes, but not when it comes to the treatment or perception of the individual after the crime. VWD are seen at the ‘Institutional Stage’[[69]](#footnote-69) (after the commission stage, where the victim interacts with the CJS) as the ‘Victimological Other’, not typically deserving of empathy as a victim of a crime.[[70]](#footnote-70)

However, the ‘Ideal victim’ is useful for current purposes as it acts as a core explanation for the increased victimisation amongst the disability community. The author argues that the Ideal Victimhood thesis is only applicable if the disability is known to the perpetrator. This knowledge of the disability can happen in two ways:

Scenario 1: Where the disability is visually apparent to the naked eye, the victim may be more susceptible to victimisation, and are seen as “easy” targets for crimes. For example, in Case Study 2, the victim believed s/he was attacked in the street verbally and physically because of his/her visually apparent disability. The perpetrator would not let the victim pass in the street and taunted him/her, and ultimately pushed the wheelchair over. The victim felt that a factor in the decision to commit the crime was his/her inability to fight back.

Scenario 2: Where the disability is known to the perpetrator due to a close personal relationship.[[71]](#footnote-71) In this way[[72]](#footnote-72), the relationship of the victim and the perpetrator is important in understanding the causes of victimisation.

The perpetrators of crimes against VW-D tend to be rooted in three types of relationships, in which the perpetrator knows the victim before the crime and is aware of the disability.[[73]](#footnote-73) This reflects the facts in all three Case Studies. The first two categories are close interpersonal relationships (family or close friends) and relationships between disabled people and their carers. The third category is more distant relationships (for example, neighbours). For the first two types of relationships, due to societal norms and expectations, there can be an internalised dependency[[74]](#footnote-74) by the VWD on the family member or primary care giver that can severely inhibit the reporting of the crime, which removes one reservation that possible perpetrators might have that would discourage them from committing such crimes. People with disabilities “typically learn not to question caregivers or others in authority.”[[75]](#footnote-75)This is problematic where the family member or care giver turns out to be the perpetrator, as is often the case (Case Study 3). In fact the Rape Crisis Network has found, albeit in relation to sexual crimes only, that in over one quarter of the crimes committed against those with disabilities, the perpetrator was a family member.[[76]](#footnote-76)

The author will now use Cohen and- Felson's Routine Activities Theory[[77]](#footnote-77) of victimology to explain how, in certain cases, the knowledge of the disability increases the risk of victimhood. Cohen and Felson argued that a rise in victimisation generally is due to an increase in opportunities to commit crimes, which in turn boils down to the convergence in time and space of three elements. According to the model, the first element required for a crime to be committed is a motivated offender. The negative attitude towards the disability community[[78]](#footnote-78) as useless[[79]](#footnote-79) and a burden on society[[80]](#footnote-80), can manifest itself in hate crime. The hatred of those with the label ‘disability’ creates further impetus for committing crimes against those with disabilities. Next we move on to ‘opportunity’ which is made up of two elements. These two elements are amplified for persons with disabilities. The availability of an attractive target is the first component of opportunity. This element of the theory only applies in cases where the perpetrator is aware of the disability – as explained above. It would appear to be even more likely to be the case in Scenario 2 where the disability is personally known. The second component is the lack of guardianship over the target which is also particularly problematic for people with disabilities. As discussed already, people with disabilities tend to be isolated from the rest of the community, often leaving their guardians (family, or care providers) an opportunity to commit crime without the intrusion or oversight of any other members of society.[[81]](#footnote-81)

### *Dependency*

Perceived and actual vulnerability (discussed above) can manifest itself in relationships of dependency. As a result, a societal sense of dependency can be attached to those who have a disability. Our society teaches those with disabilities to be reliant, dependant and compliant, which are often internalised.[[82]](#footnote-82) Depending on the circumstances, the individual may be completely dependent on a carer for basic needs and daily tasks (such as hygiene, food and finance[[83]](#footnote-83)).[[84]](#footnote-84) This creates relationships of control and unequal power. This position of power can then be abused and crimes committed.

The Law Reform Commission in relation to sexual offences has recommended that the fact that a person in authority abuses his/her power through sexual abuse be considered an aggravating factor when it comes to sentencing.[[85]](#footnote-85) Again the author believes this should apply in all cases, not just crimes of a sexual nature when ‘vulnerable adults’ are abused.

### *Status as ‘Disabled’*

The labelling lens of victimology can provide a wider rationale for why those with disabilities experience high volumes of crime. Marita Iglesias Padrón cogently describes the underlying social issue that describes why, such a high level of victimhood exists for those with disabilities

The absence of representations of their identity favours the perception that one can abuse them without remorse or conscience of being damaging. There cannot be scandal when you commit an outrage against beings without identity. No rights apply to them in this case.[[86]](#footnote-86)

If society fails to recognise people with disabilities are human beings, and more as inferior or lesser beings, the more likely it is that harm will be caused to them. The labelling of ‘disability’ to a person (given the historical links between disability, institutionalisation, and abuse) means that “abuse against people with disabilities becomes seen as something ‘natural’, a consequence of individual pathology.”[[87]](#footnote-87) This normalisation of victimisation against those with disabilities stems in part from the perception that persons with disabilities as inherently vulnerable[[88]](#footnote-88) and the historical links between vulnerability and exploitation.

This also has an effect in regards to blameworthiness. Generally for other victims the blame is put solely on the perpetrator. A similar issue to that of VWD, is the criticism identified by feminist writers and other victimologists that in cases of rape it is often the victim on trial.[[89]](#footnote-89) For crimes against VWD, because crime is seen as an inevitable consequence of their disability, society places the blame on the disability.[[90]](#footnote-90) “This has sometimes led to disabled people being removed from the perceived (or real) threat rather than action being taken against the perpetrator” in the form of crime minimisation.[[91]](#footnote-91) VWD are often encouraged to restructure their lives[[92]](#footnote-92) to minimise risk, and avoid the perpetrator or institution where the crime occurred, such as the place of work or education.[[93]](#footnote-93) This negative method of dealing with the issue is encouraged by the medical model, and expresses the message that there is something wrong with the VWD[[94]](#footnote-94), that it is his/her behaviour should be modified not the perpetrator’s. The person with the disability should not have to adapt, it is the responsibility of society to change as advocated under the social model of disability.

The capabilities of those with disabilities and opportunities for crime are matters of perception by possible perpetrators. If all of those with disabilities are considered helpless, perpetrators may use this during victim selection. If society changed its views on how people with disabilities are viewed - as independent beings capable of protecting themselves- this will seep through to all members including possible perpetrators.

### *Abuse of Friendship*

It been reported anecdotally in the literature, in relation to intellectual disabilities in particular who often have a “desire to please and be accepted”, that trusting members of the disability community are befriended by members of the wider population with the aim of abusing that trust. ‘Mate Crime’[[95]](#footnote-95) can take the form of violent, financial or sexual exploitation of that trust.[[96]](#footnote-96)

### *Economic Reasons*

Traditionally not only do the disability community lack financial independence[[97]](#footnote-97), but those with disabilities are “twice as likely to live below the poverty line as the rest of the population” in Ireland.[[98]](#footnote-98) In fact Ireland was found to have the second highest risk of poverty for those with disabilities in a study by the OECD on 27 developed countries.[[99]](#footnote-99) Poverty, along with unemployment, was common in the Case Studies.[[100]](#footnote-100) Unemployment tends to leave people at home, isolated and at risk during property offences. Being in difficult financial circumstances also creates risk for street and other crimes. Two of the three Case Studies described themselves as coming from ‘poorer backgrounds’.[[101]](#footnote-101) This can result in increased risk for victimisation in association with living in certain areas. Again this is described by the Proximity Hypothesis[[102]](#footnote-102) that “victims are likely to live in the same kind of impoverished communities as offenders are likely to be found in.”[[103]](#footnote-103)

## Hate crime

Disability hate crime not only acts as a significant factor in explaining such high rates of victimisation[[104]](#footnote-104), it also serves as a unique phenomenon in its own right. Hate crime generally is a crime that is motivated by prejudice or hostility towards the status or labelling of an individual as a member of a particular group in society.[[105]](#footnote-105) Hate crime is committed against minority or marginalised groups in society based upon ethnicity, gender, nationality, disability, religion, or sexual orientation as sexism, homophobia, age, *etc*.

In regards to disability hate crime, the label of being ‘disabled’ and the negative societal attitudes that go along with that, leave the disability community at risk of such targeted crime.

The author believes that hate crime may not be experienced by all VWD.[[106]](#footnote-106) Again, it boils down to the knowledge of the disability on the part of the perpetrator. If a disability is unknown or if a condition is not labelled a ‘disability’, it is impossible for hate crime to be committed by the perpetrator; as the knowledge of the disability forms the motive.

All three victims in the Case Studies felt some element of their crime came within the parameters of their understanding of hate crime. One in five respondents in an international survey experienced violent crime because they had a disability.[[107]](#footnote-107) A clear example of hate crime is found in Case Study 3. The victim was verbally and physically abused by his/her father, and the expressed reason for the crimes committed was that s/he was useless and of no value to the world, telling the victim “You came in broken into this world, I will break you further”. Elsewhere, the secondary victim in Case Study 1 explained that the deceased’s homicide was one motivated by prejudice and hatred towards the deceased’s disability. As such the severity of hate crime can result in homicide or other extreme crimes.[[108]](#footnote-108)

Given such extreme instances of hate crime, it is surprising that there is currently no provision in Irish law for crimes motivated by prejudice, hostility or hate towards the victim’s disability to receive harsher sentences.[[109]](#footnote-109) Ireland, may come under political pressure from Europe if it continues to neglect this area of protection, with the European Court of Human Rights grappling with its first case of disability hate crime in *Dordevic v Croatia*.[[110]](#footnote-110) Eventual ratification of the UNCRPD will also place further international pressure on Ireland in this regard, given that individuals with disabilities will have the right to Freedom from exploitation, violence and abuse under Article 16.

Under adequate hate crime legislation, the sinister motivation and targeting of those with disabilities such as this, would be considered an aggravating circumstance in sentencing (as is the case in the UK[[111]](#footnote-111), Northern Ireland[[112]](#footnote-112) and the US[[113]](#footnote-113)).[[114]](#footnote-114)

Implementing effective disability hate crime legislation would act as a deterrent to potential hate crime perpetrators.[[115]](#footnote-115) They will become aware that their disability motive will constitute an aggravating circumstances come sentencing. Although criticisms has been made as to the lack of moral education on society resulting from such legislation[[116]](#footnote-116), the chilling effect of such provisions should have a positive effect on the prevalence of victimisation amongst the disability community in the long-run as has been the case with other hate crimes.[[117]](#footnote-117) Ireland should not wait for violent attacks or even deaths to be picked up in the media before enacting disability hate crime legislation, as was the case in the UK.[[118]](#footnote-118)

## Repeat victimisation

Another trend in the wider victimology world is repeat or multiple victimisation, where the same victims experience crime persistently or on a number of occasions.[[119]](#footnote-119) Walklate has noted that members of vulnerable groups in society who experience crime, are at particular risk of experiencing repeat victimisation.[[120]](#footnote-120) The recognition of the need for extra protection for those who experience repeat victimisation under Article 18 of the upcoming EU **Victims’ Rights Directive**[[121]](#footnote-121) is to be lauded.

 The author believes that the reason the issue of repeat victimisation is particularly unique to VWD is twofold. First, it is a matter of opportunity and access. Because of issues of dependency, close personal relationships[[122]](#footnote-122) and living conditions there is scope for consistent or regular abuse and violence. This can occur where the perpetrator is the same, but commits a number of counts of a crime or a variety of crimes on the same victim.[[123]](#footnote-123) This was found to be the case in two of the Case Studies. Secondly, those with visually apparent disabilities may be victimised more than once as they are perceived as being vulnerable.

The next two sections deal with two distinct phases in the criminal justice process and the unique difficulties that arise.

# **Reporting the Crime**

## Underreporting

Although Ireland has a relatively high rate of reporting crimes for all victims at 82.5%[[124]](#footnote-124), it is thought that the figure for the disability community would be substantially higher.[[125]](#footnote-125) While much has been written on the comprehensiveness of crime statistics[[126]](#footnote-126), the problem of underreporting of crimes appears particularly acute in relation to VWD.[[127]](#footnote-127) The following reasons for underreporting as given by the VWD themselves represents a mixture of myths, exaggerations or accurate reflections of reality:

* Fear of the loss of services[[128]](#footnote-128) such as carers.
* Fear of the loss of control or independence - Being institutionalised as a consequence of any perceived wrongdoing or responsibility (fear of blame or self-blame) on the part of the victim is still a common fear. In Case Study 3, the victim was reluctant from reporting abuse because “I was afraid of being locked up”.
* Fear of repercussions from attacker[[129]](#footnote-129) - In Case Study 3 of child abuse,repercussions to the victim and other family members factored into the decision to remain silent before eventually reporting.
* The victim may not be aware that the behaviour constitutes a crime.[[130]](#footnote-130)
* No access to authorities[[131]](#footnote-131) - due to social and physical isolation.[[132]](#footnote-132)
* Fear of not being believed.[[133]](#footnote-133)
* Previous bad experience.[[134]](#footnote-134)
* Lack of awareness of their rights.[[135]](#footnote-135)
* Difficulty in verbalising experiences.[[136]](#footnote-136)
* Physical barriers.[[137]](#footnote-137)
* Nature of relationship with perpetrator, particularly relationships of dependency which inhibit the capability of reporting crimes.[[138]](#footnote-138)
* Third Party Reaction

Often third parties[[139]](#footnote-139), or indeed families, fail to report known criminal behaviour to the police, do not treat the behaviour as a crime and/or deal with the situation internally.[[140]](#footnote-140) This occurred in Case Study 3 – the victim experienced severe verbal and physical abuse by his/her father. The author advocates for better reporting procedures and collaboration from third parties when symptoms of crime are shown or suspicions arise.[[141]](#footnote-141) Any potential crime against a person with a disability must be treated as such.

 One positive step to combat this issue is the Criminal Justice (Withholding Information on Crimes against Children and Vulnerable Adults) Act 2012. It creates an offence of failing to disclose information to the Gardaí where a serious criminal offence against those with disabilities has been committed. However, from a critical standpoint; while the term ‘vulnerable adult’ does include a wide variety of types of disabilities, it only pertains to those of a severe nature. As such, its protective effect may not extend to individuals with less severe disabilities.

The grouping together of children and vulnerable adults is also a concern for this legislative provision and others. The interests of some disabilities been shoehorned onto/attached to the interests of children in certain pieces of legislation as pointed out by Jim Winters of Inclusion Ireland at a recent conference.[[142]](#footnote-142) The grouping together of the interests of the child with adults who have disabilities suggests an attitude of treating adults with disabilities as children. This may contravene the UNCRPD as “age-appropriate” accommodations are required.[[143]](#footnote-143) On a related note, in other instances the legislature has made legislative provisions that pertain solely to children in regards to their access to justice, but are lagging behind by failing to provide similar or unique protections to the interests of those with disabilities.[[144]](#footnote-144)

## Experience of Reporting

Some of the fears expressed by the VWD in the Case Studies were reflected in the reality of actually reporting the crime. The barriers at the reporting stage are evidenced in the fact that a quarter (24%) of British people with disabilities have difficulty using police services in their local area.[[145]](#footnote-145)

### *VWD Not Being Taken Seriously or Believed*

In two of the three Case Studies, the victims felt their statements about criminal activity were not taken seriously by the Gardaí. For instance, in Case Study 2, only one statement (the one made in company of an non-disabled member of the public who witnessed the attack) of three was recorded. When these assaults were reported, the claims were not believed nor investigated. “I was afraid I wouldn’t be taken seriously and I wasn’t.”[[146]](#footnote-146)

In Case Study 1 (the homicide) the victim’s family was told the input of the victim with the disability was insignificant. S/he felt s/he was not listened to adequately or trusted. This “issue of perceived capacity of people with disabilities to act as ‘reliable’ reporters of crime”[[147]](#footnote-147) is a major concern. The victim appeared to have material evidence, since she was the last person to see the deceased. Yet his/her evidence was taken two days later than the rest of the family. Previously when the victim attempted to explain the importance of his/her evidence, and that s/he used to look after the deceased – the Garda replied “sure you can barely look after yourself”. The victim felt her statement was afforded less weight even at this early stage – “I don’t think they took down all the details”. Lewin, referring to intellectual disabilities, stated that there “may be a tendancy (*sic*) in the CJS to consider persons with intellectual disabilities as less than trustworthy, and not being as accurate and credible eyewitness on account of deficient memory or intellect.”[[148]](#footnote-148)

### *Information*

Despite the right to information under the Victim’s Charter, the Case Studies reported that the Gardaí were reluctant to provide information. Some information was withheld as the victim in Case Study 1 felt the Gardaí “didn’t think I could handle it because of my disability”. In that Case Study, information relating theprogression of the case,and the release of the body was withheld from the secondary victim (who had a disability) despite being released to other family members.

In Case Study 2 the Gardaí did not proactively come forward with contact details for victim’s support organisations.[[149]](#footnote-149) The victim had to positively seek that information, despite the fact that “under the Victims Charter 2010, it is the commitment of the Garda Síochána to inform victims of crime or traumatic incidents in writing of the helpline and other support services available.”[[150]](#footnote-150) In future, all victims will have a right of access to victim support services under Article 8 of the Victims’ Rights Directive.

 Article 3 (1) of the Victims’ Rights Directive will be instrumental in removing these problems around information. It will not only make it compulsory on CJS to provide material information, but crucially the Gardaí will have to ensure the victim understands the information – of particular importance for those with intellectual or communicative disabilities. Any information or documentation should be available in accessible formats.[[151]](#footnote-151)

### *Accommodation*

In certain ways, during the interview stages of the Case Studies, their disabilities were accommodated for. For instance, in Case Study 1 the victim’s evidence was taken at the home of the victim. The Gardaí acted in the appropriate manner according to the advice of Kilcommins *et al* by allowing for “changes in the way evidence can be provided”.[[152]](#footnote-152) As we will discover, this is an example of a divergence between what the literature would advocate and what the VWD want in practice.[[153]](#footnote-153)

 In the same case s/he was not afforded any rest breaks[[154]](#footnote-154) in what was, according to the victim him/herself 3 hours of “relentless questioning and discussion”. The Case Studies as such show the *ad hoc[[155]](#footnote-155)* basis upon which the CJS operate when accommodating, or not accommodating, for the disabilities of victims.

### *Identification & Disclosure*

In order for the accommodations to be made, the Gardaí must be aware of the disability in the first place. Identification[[156]](#footnote-156) of a disability is the first stage of ensuring equitable access to justice for VWD.[[157]](#footnote-157) For certain disabilities the recognition of a disability will be relatively straight forward (in the cases of visually apparent disabilities, as occurred in Case Study 1). It is more problematic when a victim has a mild learning or mild physical difficulties[[158]](#footnote-158) or mental illness.[[159]](#footnote-159) This brings us to the issue of disclosure. Two victims in the Case Studies felt that Gardaí should actively attempt to find out what type of disability the victim has.[[160]](#footnote-160) However, the attitude of many members of the CJS in these cases suggest that even if the law and CJS agencies can encourage disclosure or actively seek that information, whereby the VWD may not be believed, may be discriminated against, and may not be treated with dignity and respect subsequent to the CJS agencies gaining knowledge about their disability.[[161]](#footnote-161)

### *Physical Barriers*

Physical barriers to reporting remain for VWD. This is an example how the “Disability Act 2005 has largely failed to penetrate how the CJS views people with disabilities”[[162]](#footnote-162) with regards to accessible locations, despite the unacceptable and clear violation of statutory duties. In Case Study 2, when reporting the attack in the street, the Garda apologised stating there was nowhere suitable to bring the victim with a disability to make the statement at that time. The victim felt if the attack had been on a non-disabled member of the public, the statement would have been taken immediately. In Case Study 1, the VWD faced difficulties interacting with the Gardaí due to the height of the front desk, and his/her wheelchair struggled to fit through some of the internal doors in the station. In addition to current statutory requirements, CJS agencies will face further requirements to improve in this regard under Article 23 of the Victims’ Rights Directive.

### *Perceived Discrimination*

This is one area not picked up upon in the literature that was a clear theme in the current study. One victim felt “I was definitely singled out (by the Gardaí) because of my disability.”

In Case Study 1, because the Gardaí were aware of the disability, the victim felt left out of the discussions between the Gardaí and the family, and felt s/he was treated differently. Discrimination is prohibited under the Disability Act 2005 and Equal Status Acts (expressly on the grounds of disability), and Article 1 (1) of the Victims’ Rights Directive also prohibits discrimination in a criminal justice context.

### *Assumptions*

Labelling theory[[163]](#footnote-163) can explain how certain preconceptions arise in people’s attitudes towards those with disabilities.[[164]](#footnote-164)

The victims in the Case Studies found this broadly to be case in Irish society today, including in relation to their dealings with the CJS. There appeared to be a reliance on stereotypical[[165]](#footnote-165) assumptions around the fact that the victims were “disabled”.The root cause of these assumptions is a simple lack of knowledge[[166]](#footnote-166) about disabilities. “Police can make ill-informed judgements about the person … and how best to respond to them as a result of stereotypes and a lack of awareness about individual needs”.[[167]](#footnote-167)

### *Miscellaneous Issues*

In the Case Studies irrelevant personal questions[[168]](#footnote-168) about the disability were reportedly asked by the Gardaí such as “who dresses you?” and “do you have spasmic (*sic*) shakes?” In future cases, the CJS personnel are restrained from asking questions about the victims’ personal life under Article 23 (3) (c) of the Victims’ Rights Directive.

* The Gardaí also failed to directly address the victim in Case Study 1.[[169]](#footnote-169)
* However, in Case Study 3 the victim found the Gardaí to be more attentive as regards the progression of the criminal case once they were aware of the disability. In this manner the disability actually enabled access to justice contrary to the literature’s consensus, as the Gardaí felt passionate to ensure justice was done.

# **Trial Stage**

The lack of accommodations for VWD at the trial stage, is suggested in the fact that only one of the three Case Studies acted as a witness in a court case. This lack of trust towards VWD to act as witnesses is reflected in the scarcity of cases involving VWD, and in the paucity of successful convictions (*ie* attrition rates).[[170]](#footnote-170)

## Decision to Go to Trial

The difficulties experienced when reporting often result in a failure to bring a criminal case to trial. The police or the Director of Public Prosecutions (‘**DPP**’) may prevent the progression of the trial for a number of reasons, but in cases involving VWD a predominant factor appears to be a belief in the difficulty of establishing proof.[[171]](#footnote-171) These beliefs are often based on generalised stereotypical assumptions that people with disabilities are unreliable witnesses and incapable of withstanding the adversarial nature and the atmosphere of the courtroom.[[172]](#footnote-172) The Victims’ Rights Directive should help reverse this trend and will ensure more transparency around such decisions, by placing an onus on the DPP to provide a rationale to the victim for its decision to refrain from continuing to trial or prosecuting a crime under **Articles 6 (1) (a)** and 11 (which includes a right to appeal such a decision).

## As a Witness

### *Oral*

Orality, as the fundamental principle of the adversarial system, poses difficulties to those with disabilities.[[173]](#footnote-173) There is a dichotomy between the nature of how those with disabilities interact and how victims are expected to interact (*ie* orally in a witness box). The reluctance of the decision makers in proceeding to trial and allowing evidence, is not completely ungrounded in this regard. “Research in the mid-1990s showed that people with learning disabilities (and, by extrapolation, mental disorders) were particularly vulnerable to … the stresses of giving evidence in court”.[[174]](#footnote-174) The legal system should be responsible[[175]](#footnote-175) for this issue and it should adapt to suit the needs of all, while maintaining a balance of fairness for all parties.

### *Oath*

Anecdotally there is a widespread assumption that those with disabilities, in particular intellectual disabilities, are incapable of being competent witnesses.[[176]](#footnote-176) The ability of VWD to withstand cross examination[[177]](#footnote-177) is often doubted. We cannot treat all VWD the same, applying a generic assumption that no person with a disability has the capacity to provide evidence. “‘Competence to give evidence is an ‘all-or-nothing’ concept currently”[[178]](#footnote-178) and this should not be the case. The decision should be made on a case-by-case basis, with his/her unique needs being reasonably accommodated for.[[179]](#footnote-179) Every individual, even if they have a disability, should be presumed, both legally and in practice, to have capacity regardless of the method of delivery. Currently, competency to act as a witness is tested on an explanation of the oath[[180]](#footnote-180), its consequences and oath and the ability to provide rationale testimony.[[181]](#footnote-181) This author recommends the Irish CJS adopt the more pragmatic English approach: a witness is not competent to give evidence if they A) are not able to understand questions put to them as a witness and B) cannot give answers to those questions which can be understood.[[182]](#footnote-182)

### *Current Legislative Improvements*

The following attempts have been made in the Criminal Evidence Act 1992 to make the CJS more accommodating for VWD:

* s. 27(1) - if the witness with a mental disability[[183]](#footnote-183) is “capable of giving an intelligible account of events which are relevant to those proceedings”, then the victim can give evidence without taking or understanding the oath;[[184]](#footnote-184)
* s. 16(1)(b) - in sexual offence cases a video recording of an interview of a person with an intellectual disability, may be admissible;
* s. 13 (1)(b) - evidence at trial can also be given by live video-link if the victim has an intellectual disability;[[185]](#footnote-185) and
* S.14 - use of intermediaries for victims with mental disabilities is permitted in cases of sexual or violent crimes when video-link is being used, and if justice requires it.[[186]](#footnote-186)

The author proposes an extension to the above sections to cover all disabilities and all types of crimes, so as to enhance the chances[[187]](#footnote-187) of such witnesses and victims providing evidence in a manner appropriate to their disability.[[188]](#footnote-188)

### *Additional Changes – Based on UK provisions*

* Screens[[189]](#footnote-189) between the defendant and witness would help remove the fear and intimidation of confronting the perpetrator.
* Communication aids

In the UK “(c)ourts have permitted a wide range (e.g. pen and paper, models, picture cards, signal boards, visual timetables, human figure drawings and technology) to augment or replace oral testimony.”[[190]](#footnote-190) The Irish courts should take a step further and include assistive technologies as will be required under Article 23 (3) (b) of the Victims’ Rights Directive.

* Questioning

The traditional type of questioning of the common law courts can be confusing, intimidating and inappropriate to certain disabilities.[[191]](#footnote-191) In the case of intellectual disabilities, they are more likely to acquiescence and say yes to leading questions, which can undermine the success of a court prosecution.[[192]](#footnote-192) By adjustments questioning styles ‘the accuracy and completeness of eyewitness testimony given by people with learning disabilities can be significantly improved if suitable questioning strategies are adopted’.[[193]](#footnote-193)

### *Miscellaneous Practical Issues*

A number of issues arose in practice at the trial stage for the victim in Case Study 3 that has been highlighted in the discourse.

* The victim was frustrated with the lack of information and updates around the trial stage.
* The victim found the formal language and unknown “strange” processes of the courts to be distressing and confusing. A simple change that helped alleviate this concern was the removal of wigs and gowns. In another context, in relation to the Mental Capacity Bill, it was found that “A formal court environment can be an intimidating place, particularly for very vulnerable people.”[[194]](#footnote-194) One victim in the Case Studies outline that the “whole law system is complicated, it needs to be more simple.”[[195]](#footnote-195)
* The victim felt that experience of appearing in court was particularly “scary” due to the close proximity to the perpetrator. Article 19 of the Victims’ Rights Directive will give all victims the right to avoid contact with the perpetrator.
* Although the Courts Service have a designated “Disability Liaison Officer”[[196]](#footnote-196), the victim was unaware of this. This was an underlying issue at all stages – the authorities were unsure as to who exactly was responsible.
* On the other hand, the victim found the trial judge to be actually quite accommodating. This finding is at odds with some of the literature “the judiciary are particularly resistant to special measures for victims and witnesses.”[[197]](#footnote-197) The judge accommodated for the physical disability, making the victim feel as comfortable as possible. The judge also restricted the amount of people allowed into the court during the testimony. Using her first name, the judge treated the victim as a person - “it was amazing”. This positive treatment by the judge created an atmosphere of acceptance and trustworthiness towards the VWD and the VWD was also treated with respect by both barristers in the court.

# **Post-CJS[[198]](#footnote-198) Experiences – Life after the Crime & the Criminal Justice Process**

While victimisation for any individual is a traumatic and life-changing experience, certain factors make victimisation comparatively more traumatic in the long-run for those with disabilities.

* Living in fear

While the immediate primary victim with a disability will experience this fear, a ripple effect can occur where the wider disability community also experience fear despite not having experienced the crime directly[[199]](#footnote-199), as its members become aware of crimes committed against its members and become fearful for their own safety. Indeed in one study, one third of the disability community did not feel safe in their community.[[200]](#footnote-200)

* Exacerbation of the disability

The process of victimisation may cause the severity of the disability to increase. This can often be the case with pre-existing mental health problems[[201]](#footnote-201), where the crime itself and process of reliving the crime during the trial can cause further mental health issues. Also, physical disabilities can be exacerbated in cases of physical assaults, and fatigue can develop during the lengthy trial stages.

* Mental health

Mental health issues can develop as a result of crime, such as depression and anxiety even if no history of mental health problems existed before the crime. This issue arose in Case Study 1, where the trauma of the crime and to an even greater extent the criminal justice process, resulted in a risk of suicide. Only for the intervention of the victim’s organisation the outcome may have been dramatically different. The interviewee stated that “this victim organisation saved my life”.

* Frustration/unhappiness with the CJS

The victim in Case Study 1 remains dissatisfied with the CJS and its service providers. That feeling of unfairness is not the exception and it follows the trend in the literature.[[202]](#footnote-202) The British Crime Survey 2010/11 found that people with disabilities were less likely than non-disabled people to think that the CJS was fair.[[203]](#footnote-203) In the Case Study, the VWD stated: “I have zero trust in the Gardaí now” and expressed a reluctance to report any subsequent crimes due to the treatment s/he received.[[204]](#footnote-204)

# **Analysis**

## Tertiary Victimisation

The primary research conducted in this dissertation supports the consensus in the literature in relation to the substantial barriers to justice that VWD face.

Separately in wider victimological circles there has been an identification of a phenomenon known as secondary victimisation. According to the leading academic in the area, Walklate, secondary victimisation is “the victimisation that occurs as a result of involvement in the CJS.”[[205]](#footnote-205) It refers to further harm and suffering experienced by a victim of a crime, after the initial commission of the crime (the primary victimisation) during the process of reporting the crime and during the trial stage.

However, it is this author’s contention that there is a third level of victimisation: “tertiary victimisation”[[206]](#footnote-206), which will now be explored. (*See* **Diagram 1**)

Diagram 1: Tertiary Victimisation

VWD face the 'mainstream' issues which many victims face in interfacing with the criminal justice process – these issues include a lack of status, the formality of the CJS, stressful cross-examination, recalling the traumatic experience in front of a packed courtroom, facing the perpetrator again, and a defendant focused system. In turn these issues are compounded at times by the Gardaí’s and legal professional's responses to their disability, along with unique issues such as accessibility and discrimination (*See* **Diagram 2**).

The author believes that tertiary victimisation is a result of secondary victimisation being compounded by the reaction of the CJS to a victim having a disability.[[207]](#footnote-207) Again the author relies upon the social model of disability. It is the rigidity of the CJS that not only ‘disables’ access to justice for VWD, but it also intensifies the trauma endured during the reporting and trial stages of the crime.



Diagram 2: Tertiary Victimisation

The reaction of CJS personnel (and indeed perpetrators at the commission stage) to the victim’s disability can be examined under the labelling lens of victimology. Certain groups in society are assigned labels, and it has been found that marginalised groups in society, such as victims of crimes and those who have disabilities, experience an amplification of this process and their label or status is at the core of that person’s identity.[[208]](#footnote-208) Attached to these labels are certain preconceptions, which are then acted upon by societal actors such as legal institutions and other individuals in society.

Labelling theory is particularly useful when considering the interaction of ‘disability’ and ‘victimhood’. The meaning of both terms, ‘victim’[[209]](#footnote-209) and ‘disability’, have been disputed academically. This dissertation focuses on the double labelling for VWD; that is the identity of someone who has a disability and who is a victim.

There is a historical attitude of “casual disabilism”[[210]](#footnote-210) which has bred, in certain contexts, an atmosphere of discrimination and hostility towards people with disabilities. This “(p)rejudice against disabled people is rooted in the view that disabled people are inferior; in some cases less than human.”[[211]](#footnote-211) We as a society, as one interviewee described, “fail to see past the disability, you can’t see the human beneath the disability”. We see here how commonly held attitudes of inferiority against those with disabilities not only is a predominant cause in the scale of crime committed against those with disabilities, but also in the inadequate facilitation for their needs by the CJS. The condescending and sympathetic[[212]](#footnote-212) attitudes that people with disabilities experience in their everyday lives[[213]](#footnote-213) are compounded during the criminal justice process and this ‘double stigma’[[214]](#footnote-214) adversely impacts both their well-being and their access to justice for VWD.

The impact of tertiary victimisation is substantial. Following a particularly difficult encounter with one of the CJS agencies, the victim in Case Study 1 became extremely upset and “couldn’t sleep, I was having dreams about speaking to the Gardaí, it made me want to vomit”. S/he then explained the deep emotional and psychological impact tertiary victimisation had on him/her “I began to question myself – to question my capability. I was deeply upset”. In relation to another interaction, s/he explained how **“**I felt like the dirt on the end of their shoe….I felt so dirty, incomplete, a jabbering idiot; that there was no point in a person like me.” In a more severe Case Study the victim’s interaction with the CJS had a direct result in a risk of suicide. Tertiary victimisation not only results in a lack of equality of justice for VWD, but also has profound effects on the personal lives of VWD. With this in mind, it is timely that the experiences of VWD come into consideration and legislative and policy changes should be made.

### *Balance*

We turn now to a difficult and inherent tension that has been apparent in this dissertation thus far, that arises as a result of the labelling of VWD as ‘disabled’. On the one hand the author has proposed that accommodations be made to the CJS to account for the disability. On the other hand, the VWD in the Case Studies also want to be treated with the same human dignity as non-disabled victims. There is a balance to be struck between these apparently competing aims. It is vital that the criminal justice agencies see the victim as a traditional victim first. The key concern is to only accommodate to the extent that the same level of justice, service and professionalism is provided comparative to a non-disabled victim. This can be achieved through the provision of reasonable adjustments to account for the disability in a sensitive manner.[[215]](#footnote-215) The agencies involved (the Gardaí, DPP, the legal professions, and Courts Service) appear to struggle with this - they either "accommodate" excessively (overaccomodation), refusing to engage the victim on a human level (by demonstrating pity towards the “special” VWD[[216]](#footnote-216) or treating them like children[[217]](#footnote-217)); or fail[[218]](#footnote-218) to accommodate, or even recognise, the disability at all.[[219]](#footnote-219)

If we look at the Case Studies as examples, the Gardaí (as one CJS agency) appear to be falling short on their stated commitment in the Victims Charter in this regard. In dedicated paragraphs to ‘Special Needs’ and ‘Dignity’ the Charter affirms that :“If you have any form of disability we will take your special needs or requirements into account…All members of the Garda Síochána will treat victims with dignity and respect whatever your… disability”. However, this was often perceived not to be the case in practice by the VWD in this study*.* The vague meaning of standards such as ‘dignity’ and ‘respect’ mean that the Gardaí in question may have been acting with what they believed was an appropriate standard of dignity and respect, but does not reflect the standard of service delivery that is required for, or expected by, VWD. The training requirement on disability awareness as such suggested in Section F.4.iv. would be preferential than, or in addition to, such vague standards.

An example of the Gardaí attempting to strike a balance between discriminating and accommodating, is seen in Case Study 1.[[220]](#footnote-220) Although the Gardaí operated with good intentions, this intention was misconstrued by the victim and it resulted in a negative impact on the victim. The victim’s evidence was taken at the home of the victim. However, the victim perceived this as being singled out. The victim, understandably, felt s/he was treated differently[[221]](#footnote-221) than the rest of the family and **“**felt embarrassed with three Gardaí calling to my door in front of my neighbours”. However, it appears the Gardaí were attempting to accommodate for the disability as appropriately and sensitively as they could.

Overaccomodation, on the other end of the spectrum, can lead to a concentration on facilitating for the disability and not following up with the crime itself. ‘There is a risk that … the criminal justice services, see someone has a learning disability and think it is their learning disability that has to be dealt with rather than the crime.’[[222]](#footnote-222) For example, the Gardaí refused to divulge information, in Case Study 1 because he felt the victim would not be able to cope with it. The victim would have preferred if s/he had been treated as any victim would. The intention by the Garda in this instance reflects a protectionist approach based upon the medical model of disability. Under the traditional medical model, the ‘disability’ label evokes sympathy around a disability that needs to be fixed. Under this protectionist paradigm there is a focus on the individual’s perceived vulnerability, resulting in assumptions that those with disabilities do not have the capacity or autonomy to protect themselves, make their own decisions.[[223]](#footnote-223) This has manifested itself in the CJS whereby certain decisions are taken out of the VWD hands, such as giving evidence against the perpetrator, or giving a victim impact statement (Case Study 1), or where the Gardaí “protect” the victim from certain information.

The phenomenon just discussed is referred to as ‘double jeopardy’ in the literature. ‘On the one hand, police are unlikely to identify …, and therefore are unlikely to provide appropriate support to assist them in reporting crime and harassment. On the other, the police may become aware that the person has learning disabilities through the reporting process and then not follow through with the report as they would with another person.’[[224]](#footnote-224) This latter result of double jeopardy is known as ‘diagnostic overshadowing’ whereby standard procedures are not followed as they would in any other case. This may explain why the victim in Case Study 2 not referred to victim support organisations similar to the findings of Hoong Sin *et al*.[[225]](#footnote-225)

Tertiary victimisation has manifested itself directly as such in the provision of the service CJS agencies provide to those with disabilities. Bearing in mind the presence of tertiary victimisation and its impacts, we now turn to possible solutions.

## Recommendations

 “The systems and attitudes that deny disabled people justice and human rights needs to be overhauled and those who wish to deny disabled people their humanity must be condemned and punished.”[[226]](#footnote-226) Here Quarmby (inadvertently) covers two related points asserted by this dissertation – not only must crimes against those with disabilities be prevented, but so too must tertiary victimisation. All parties in the CJS need to be able to recognise disabilities when they exist, know the effect the disability has on service provision, and how they can accommodate for it.[[227]](#footnote-227) The negative experiences of the VWD in the Case Studies and those from the wider literature could be mitigated by the suggestions made throughout the dissertation as suggested by the VWD themselves. The following suggestions could further safeguard victims from tertiary victimisation.

### The establishment of a *statutory group of vulnerable witnesses*[[228]](#footnote-228) could provide statutory basis and practical scope for accommodating VWD at both the reporting and trial stages.[[229]](#footnote-229)

### Better *interparty communication* and collaboration between CJS agencies when disabilities are identified.

### *Representation*

Given the peripheral position victims play in, and the complexity of, the CJS, VWD may need a representative or advocate both at the reporting and trial stage, who could provide a number of functions. In one Case Study, the victim, referring to the Garda treatment of the victim, felt a representative “needed to say that’s out of order”. A representative can also help identify what supports should be provided[[230]](#footnote-230), or where appropriate could act as an intermediary or interpreter.[[231]](#footnote-231) Also the victim in Case Study 3 felt that “If I had someone to sit beside in court and support me”, s/he would have had a less traumatic experience.[[232]](#footnote-232)

VWD may be entitled to have a legal representative or another individual under Article 20 (c) of the Victims’ Rights Directive. Victim’s with communicative difficulties will also be entitled to a representative to aid communicate under Article 3 (3).

###  *Training*

In Case Study 2, the victim strongly advocated that “all Gardaí should have training days on disability awareness.”[[233]](#footnote-233) For if the Gardaí, as gatekeepers[[234]](#footnote-234) to the CJS, fail to understand the nature and effect of the specific individual disability, how can they accommodate the needs of the victim and provide an equal level of justice? While this section deals predominantly with changes to be made to Garda processes, the same is true of all CJS personnel. Under Article 13 (2) of the UNCRPD“In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”[[235]](#footnote-235) Similarly, Article 25 of the Victims’ Rights Directive makes it compulsory for all CJS personnel to receive generalist and specialist training (on VWD for example) for dealing with victims. As such, the training should not be limited to just the Gardaí. One victim in the Case Studies agreed, “Solicitors also need training on how to address people with disabilities.”

According to the Gardaí “A number of selected Garda personnel have undergone intensive training and are deemed competent to deal with all victims of serious crime, including under 14 year olds and persons with intellectual disabilities.”[[236]](#footnote-236) However, based upon the limited three Case Studies, this does not appear to be apparent to VWD in practice. In any event, training should be provided for dealing with a variety of disabilities. Under Article 23 (2) (b) of the Victims’ Rights Directive, Gardaí will have to be specifically trained for dealing with VWD.

The training to all CJS members should encompass advice on how to treat VWD treat with respect, especially in regards to their intelligence and capabilities; as one of the VWD in the Case Studies put it “They shouldn’t assume that the person with the disability cannot contribute before talking to them”. CJS personnel need to learn how to be more empathetic.[[237]](#footnote-237) One VWD in the Case Studies would love for them to “walk a day in my shoes”. The Case Studies reported were numerous examples of CJS employees displaying a condescending or insulting attitude towards those with disabilities.

* “They told me ‘so you are quite clever behind all that… you wouldn’t think that with your condition’.”
* “The solicitors and barristers were surprised with my level of understanding.”
* “They told me he would stay over the other side of the room, for fear of being kicked or slapped in a fit”
* “They used words like spastic.”
* “The Gardaí told me out straight that couldn’t deal with my disability, they were uncomfortable with it”.[[238]](#footnote-238)

By becoming familiar with the various disabilities they may encounter, this the Gardaí would be more conscientious of their language, mannerisms, and tone.

Garda training should also review how interviews are conducted and questions asked, similar to the examination of witnesses at the trial stage.[[239]](#footnote-239) According to the Gardaí “Under no circumstances should a child under 14 years of age (or a person with an intellectual disability) be interviewed by a person other than a trained Specialist Victim Interviewer.”[[240]](#footnote-240) Training should be provided for all Gardaí. It has been argued that the lack of training may be a factor in the lower rates of prosecution for cases involving intellectual disabilities for example.[[241]](#footnote-241)

After such training, a development of guides to be used as reference points for the judiciary[[242]](#footnote-242), barristers, solicitors, DPP[[243]](#footnote-243), the Court’s Service, victim’s organisations and the victims’ themselves, would allow for greater implementation of the training.

1. *Ratification of the UN Convention on the Rights of Persons with Disability*

By ratifying the UNCRPD, VWD will have additional international legal backing in seeking change in this area. The author believe the UNCRPD will act as an impetus for such changes in the CJS, as a right to equal access to justice is enshrined in Article 13.

### *Statutory obligations & Explicit Rights*

Mawby and Gill have previously outlined rights that apply to all victims.[[244]](#footnote-244) However, certain rights (both procedural rights and service rights)[[245]](#footnote-245) are of greater importance to, or are more difficult to access for, VWD. As a result, not only should current legislative protections be adhered to, but legislation specific to VWD should be developed. These rights must not only be explicit in these legal instruments and training manuals for CJS personnel, but the disability community must be aware of their rights. In 2010, the Central Statistics Office found that 28% of the disability community were not aware of their rights in relation to equality law.[[246]](#footnote-246) Currently, during their interaction with the CJS, VWD can rely upon equality legislation as well as certain criminal law provisions.

One straightforward method of enabling a greater access to justice for VWD is ensuring that state agencies and service providers live up to their current responsibilities and duties under the Disability Act 2005 and the Equal Status Acts 2002-2011. The Equal Status Acts 2002-2011 state that service providers are required to do all that is reasonable to accommodate the needs of a person with a disability. The Disability Act 2005 also requires appropriate access is available to the mainstream public buildings, services, facilities and information of the CJS. Furthermore, the implementation of the Victims’ Rights Directive will place more onerous obligations on the CJS personnel. This author is adamant that CJS agencies recognise their duties and act accordingly.

This author believes that upcoming changes in European law will play a pivotal role in providing for a more equal access to justice for VWD. The Victims’ Rights Directive will alleviate the concerns of VWD and reduce tertiary victimisation, if abided by on the part of the CJS agencies. The influence of these new provisions are three-fold. Firstly, it will impose additional and explicit obligations on CJS personnel. Secondly, it will create rights for victims and VWD as a corollary of those obligations. Finally, it will also provide an impetus for change in the promotion of victims’ rights generally that should also involve measures that are specific to VWD. The improvement in conditions for all victims will help the situation of VWD to a certain extent. Furthermore, specific provisions directed at improving unique victims’ groups and vulnerable victims (Article 18) will be instrumental in dealing with the unique concerns of VWD.

The key provisions (in addition to those mentioned throughout the dissertation) from the perspective of VWD are Article 22-24. Under article 22 all victims have the right to an individual assessment with the purpose of identifying specific protection needs. On foot of this assessment, VWD may have a right to certain special measures under Articles 23 and 24. Not only are specific risk factors are mentioned in the Directive that will often apply to VWD (such as hate crime, close relationships with the perpetrator, and exploitation), but a victim’s disability is expressly mentioned in Article 22 (3) as a particular factor for CJS agencies to consider.

The Irish government provided an indication of their commitment to bringing about change in this regard by not only opting into implementing the Directive, but by expressing an intention to go beyond the requirements of the Directive.[[247]](#footnote-247)

# **Conclusion**

Increasingly disability has become a political point for discussion and change.[[248]](#footnote-248) However, the CJS is lagging behind other institutions in society.The problems of having both the label of ‘disability’ and the ‘label of victim’ continue to act as barriers in CJS for VWD. In 1997 VWD were considered “unlikely to achieve justice under the current system.”[[249]](#footnote-249) Seventeen years later this remains the case. A reluctance to adapt the CJS remains, resulting in a denial of rights in relation to access to justice. This undermines the role of criminal law in protecting the rights of, and providing redress for, VWD.[[250]](#footnote-250) If the barriers to justice are removed for VWD, it is likely that more convictions will result and this could lead to less crime against people with disabilities. Possible perpetrators would soon learn that such human rights violations will not be tolerated in Irish society, where we treat all victims equally, regardless of their disability. CJS personnel also need to become aware that tertiary victimisation, of which they play a significant contributory role, will not be tolerated either. Changes to societal norms and values as reflected in the legal system will “ensure that people have the knowledge, tools and means to protect themselves to the full extent of their capacity”.[[251]](#footnote-251) It is the societal attitudes to disability that represents the root cause behind of the barriers to justice and tertiary victimisation for VWD.[[252]](#footnote-252)

By engaging directly with VWD and seeking out their opinions, this study has attempted to encourage meaningful and transformative discourse in the area. The dissertation began, for the purposes of providing contextual background to the issues, by looking at the roots of why the interests VWD have struggled to get attention. We then moved on to the specific needs and barriers that VWD face throughout the commission, reporting and trial stages. The Case Studies provided useful narratives and concrete examples for this discourse. Discussions on the impact primary and tertiary victimisation has on VWD specifically provided further rationale in the call for legal changes in this regard. The most insightful findings of the study are the conclusions that barriers to justice do exist in reality for VWD, and secondly that these barriers cause a process which the author calls tertiary victimisation.

If the CJS can learn to strike a fair balance between accommodating for the victim’s disability and also treating those with disabilities with autonomy and integrity, tertiary victimisation can be eradicated. However, a societal, political and legal will is required in order to provide VWD with the same opportunities for justice as their non-disabled counterparts. The principle of equality in terms of access to justice is enshrined in Article 13 of the UNCRPD and in Recitals 15 and 66 of the preamble to the Victims’ Rights Directive. But to give any real meaning to these principles, legislative and policy changes are required. By combining the recommendations made throughout the dissertation, in combination with future legal developments on a European (Victims’ Rights Directive) and international level (the ratification of the UNCRPD), and improvements relating to the experiences of primary and secondary victimisation (through an improvement for the positions of all victims), the real-life experience of VWD in their interaction with the CJS could be substantially improved, and tertiary victimisation could begin to become eradicated.

# Appendices

## Appendix 1 - Email to Victims’ Organisations

Dear Sir/Madam,

My name is Michael Mullan, a final year Law & Business student at Trinity College Dublin. I am currently researching into the experience victims of crimes with disabilities have of the criminal justice system. I am writing an essay for my Criminology module and hoping to develop a research dissertation and an academic article on the topic as well.

I am currently in the process of setting up qualitative interviews with the victims themselves. I am writing to you, with an enquiry as to whether you would be able to facilitate interviews with possible victims of crimes who have disabilities who have used your service in the past. I would appreciate if you could make contact with possible eligible participants in the study. The interviews will last approx 45 mins. The questions would revolve around how those
with disabilities are treated in the criminal justice system; how victims with disabilities are recognised, did their disability restrict their access to justice etc.

The interviews will be conducted in a sensitive and confidential manner. If the participant would like a friend, a member from your organisation, or a family member to attend the interview, this can be facilitated for.

As regards a timeline for the project, I am looking to have my interviews completed before the end of the month in order to have the article submitted. If this is too tight a schedule, I would be willing to wait a couple of more weeks for your input.

Please find attached a formal proposal for the study. Let me know if you have any questions in relation to the research.

Regards,
Michael Mullan
087-6481319

## Appendix 2 - Proposal to Victims and Victims’ Organisations

**Type of study**:

Qualitative interviews with victims of crimes with disabilities into their experience of the criminal justice system.

**Biography of the interviewer:**

Michael Mullan is a final year Law & Business undergraduate student in Trinity College Dublin, with a keen interest in victims’ rights and disability law. He has previously volunteered with Victim Support at Court providing court accompaniment service. In the area of disability law, he has also published a practical guide for lecturers in all Higher Education Institutions on their responsibilities in providing reasonable accommodations to students with disabilities available here <http://www.tcd.ie/disability/assets/doc/Word%20Docs/Reasonable-acc-for-teaching-staff.docx>. The current study, under the supervision of Trinity College Dublin’s law lecturer Ivana Bacik, is the basis for an essay in college (in a module called criminology), other research and an academic article in the area of victimology to be published in a law journal.

**Contact details:**

087-6481319

mimullan@tcd.ie

**Supervisor:** Ivana Bacik, lecturer of Criminology at Trinity College Dublin.

**Rationale for topic**:

While there is a considerable amount of criminological work on victimology generally, and a limited amount of study on specific types of disabilities (such as those who have hearing or intellectual disabilities etc) and specific types of offences (such as sexual offences), there has yet to be a comprehensive analysis of the sub-group ‘victims of crime with disabilities’ in Ireland. The current study attempts to test the theoretical principles and claims laid out in the limited literature (most importantly ‘Access to Justice for People with Disabilities as Victims of Crime in Ireland’ by Claire Edwards, Gillian Harold, and Shane Kilcommins, 2012) and discover if the apparent trends are born out in reality. Particularly, an emphasis is placed on discovering what barriers the victims with disabilities themselves found to be most obtrusive to justice. Also, the correlation between people with disabilities and their perceived vulnerability to crime, and links with a lack of successful convictions perhaps due to conceptions around their participation as competent witnesses, will be examined.

**Aim:**

* To establish to what extent, if any, is access to justice prohibited by virtue of a victim’s disability
* To discover what barriers to justice exist for victims with disabilities
* To establish the prevalence of victimisation amongst persons with disabilities.
* To shed light on their difficulties in the adversarial criminal justice process.
* To learn from and give victims with disabilities a voice in relation to their own experience
* To compare different disabilities and different types of crime
* To understand the linkages between people with disabilities and victimisation, the criminal justice system, vulnerability, and successful conviction.

**Method**

* Approximately a thirty to forty five minute oral interview will take place between the interviewer (Michael Mullan) and the victim.
* Informed Consent forms will be issued to each participant, which they will be asked to sign (See attached)
* A representative, friend, counsellor or family member may be in the room at the request of the participant. It is also permissible if the victim wants or needs a facilitator (such as an assistant/carer/parent/guardian) in the room or to answer through. In cases involving a victim with disabilities who cannot participate or who is deceased, a proxy can attend and answer on their behalf (such as a family member).
* The interview will take place at a time and venue (eg in the Central Criminal Courts, Four Courts, Trinity College Dublin, the premises of the Victims’ Organisation etc.) that suits the participant.
* Questions will be prepared in advance and will be reviewed and agreed upon by the organisation or person responsible for facilitating the interview. Questions will be open-ended to allow for elaboration. The questions start and end with general questions, and otherwise they follow a chronological order through the stages of the criminal justice process (from the crime itself, through reporting, onto the trial stage and finally post-crime experiences).
* If the victim allows, the interviewer will record the interview with a Dictaphone, for the purposes of establishing accurate responses. The interviewer will also jot down short-hand notes.
* If the participant allows for written notes to be taken and/or the interview to be recorded, any hard-copy data will be stored in locked cabinets and any electronic data will be maintained in encrypted files on the researcher’s computer. The transcripts will be stored for two years
	1. All responses will be anonymous with no link capable of being formed between the person and the responses published. Facts will only be revealed in publications for the purposes of supporting argument. All of the participants responses will be de-identified by making their narratives gender neutral and by not using names, locations *etc*. Generally, the interviews and study will be conducted in a sensitive, timely and confidential manner. However, if a risk to the safety of the participant or another individual arises, this confidentiality agreement will be intentionally breached and relevant parties notified.
* Information sheet with other support organisations will be provided to the participants given the sensitive and emotional nature of the interview (See attached)
* The responses will form the basis for a conclusion by the interviewer as to the general experience of victims with disabilities on the criminal justice system. In addition to generalising aggregate responses, short excerpts from the interview may be published to exemplify a point, but again will be anonymous.

## Appendix 3 - Other useful support organisations

* Victim Support at Court (VSAC) 01 872 6785 [www.vsac.ie](http://www.vsac.ie) enquiries@vsac.ie
* Advocates for Victims of Homicide (AdVIC) 086 127 2156 [www.advic.ie](http://www.advic.ie)
* Rape Crisis Network Ireland (RCNI) Galway: (091) 563 676. Dublin Helpline: 1800 77 88 88 [www.rcni.ie](http://www.rcni.ie/)
* Support After Homicide 087 983 7322 [www.supportafterhomicide.ie](http://www.supportafterhomicide.ie/)
* National Sexual Violence Helpline(for men and women): 1800 77 88 88
* National Domestic Violence Helpline(for women): 1800 341 900
* Amen (for men experiencing domestic violence): 046-9023718 [www.amen.ie](http://www.amen.ie/)
* Elder Abuse Helpline: 1850 24 1850
* One in Four (01) 662 4070 [www.oneinfour.org](http://www.oneinfour.org/)
* Crime Victims Helpline 116 006 <http://www.crimevictimshelpline.ie/> info@crimevictimshelpline.ie

## Appendix 4 - Consent form

**Consent Form**

Interviews with Victims of Crime with Disabilities

Please tick the following boxes if you agree:

I agree to take part in this interview for the study €

I agree to the interview being recorded by a Dictaphone & later transcribed €

I agree to the interviewer taking handwritten notes €

I agree to that the contents of the interview, including direct or indirect quotations of the interview may used in published academic articles, other research & college essays. €

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Appendix 5 - Schedule of semi-structured interviews

**List of questions**

1. **General questions**
2. Did your disability affect your participation in the criminal justice process? If so, how?
3. Were you treated differently (positively or negatively) due to your disability while engaged with the criminal justice system (commitment of crime to trial stage)? If so, how and why do you think you were treated differently?
4. Could you explain any barriers that existed which prevented your access to justice because of your disability?
5. Was your victim experience worsened due to your disability? If so, how?
6. **Crime**
7. What was the nature of the crime?
8. Why do you feel you were victimised?
9. What was the nature of your relationship (if any) with the perpetrator?
10. **Reporting**
11. Did you assist in the reporting of the crime?
12. a. If you reported the crime - Did you have any reservations/worries about reporting the crime?

 b. If you did not report the crime – What was the reasons for this decision?

Did your disability factor into this decision?

1. How did you feel about the police’s attitude towards & treatment of you?
2. To what extent were your claims believed?
3. How was your disability recognised & accommodated at this stage?
4. **Court**
5. Please explain if you had any reservations/worries about proceeding with the case to trial stage.
6. How did you feel about the attitude towards & treatment of you, by different parties at the trial stage? For e.g. the judge, the jury, the prosecution barristers & solicitors, the defence barristers & solicitors, the service providers (such as Victim Support at Court), the media etc.
7. Did you feel the formal procedures and language acted as barriers to justice?

 Were these issues particularly problematic due to your disability?

1. How was your disability recognised & accommodated at this stage?
2. **Evidence**
3. Did you or your family give evidence or act as witnesses? If not, why not?
4. Do you feel your evidence was believed & afforded the same weight/credibility/importance as would have been the case if you did not have a disability? If not, why not?
5. Did you provide evidence in a different method because of your disability? If so, how?
6. How did you feel about the attitude towards & treatment of you, during examination & cross examination?
7. How was your disability recognised & accommodated at this stage?
8. **Concluding questions**
9. How do you feel the criminal justice system could be improved for future cases to accommodate for victims’ disabilities?

For e.g. what about - Legal representation of the victim, training of personnel.

1. How has this victimhood experience impacted on your daily life?
2. Have you ever been a victim of any other crime? Do you feel you were victimised/targeted due to your disability? How so?
3. Overall were you satisfied with your experience of the criminal justice system?
4. Is there anything else you would like to add that we have not covered?

# **Acknowledgements**

Senior Sophister LLB (Bus) Candidate, Trinity College Dublin. The author would like to thank all participants in the interviews, who retold their emotional stories in the hope of improving the CJS experience for future victims with disabilities. I am also grateful to the disability organisations who facilitated the interviews and provided support. I would like to thank Shane Kilcommins and Gill Harold who ignited my interest in the area. I am very grateful to my supervisor David Prendergast for guiding me through the research process. Finally I would like to express my deepest thanks to Mel Murphy for the immense support and editorial work!

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education. Chris Jennings*, Triple Disadvantage, Out of Sight, Out of Mind: Violence Against Women with Disabilities Project*, (Department of Human Services Australia, 2003). <<http://www.dvrcv.org.au/sites/thelookout.sites.go1.com.au/files/Triple%20disadvantage%20report%202003%20%28full%20report%29.pdf>> (visited 17 October 2013);

and employment. ECRI, *ECRI Report on Ireland (fourth monitoring cycle)* (Council of Europe, 2013). <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf> (visited 03/01/2014). More generally, the ECRI found that persons with a disability were more likely to experience discrimination compared with persons without a disability in Ireland. [↑](#footnote-ref-34)
35. Edwards, note 10, at 5;Dorottya Karsay and Oliver Lewisa, “Disability, Torture and Ill-treatment: Taking Stock and Ending Abuses” (2012) 16 *The International Journal of Human Rights* 6. Karsay and Lewisa have linked a wider societal lack of interest and monitoring to the actual levels of victimisation in institutions. [↑](#footnote-ref-35)
36. Article 10 of the Directive 2012/29/EU of the European Parliament and of The Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ L 315/57 14 November 2012 (**the** **Victims’ Rights Directive**) is to be welcomed in this regard, as it will give VWD a statutory footing for assertion of their right to have their voice heard in the context of criminal trials. [↑](#footnote-ref-36)
37. Eilionóir Flynn, “Making human rights meaningful for people with disabilities: advocacy, access to justice and equality before the law” 17 (2013) 4 *The International Journal of Human Rights* 491, at 504. Dan Goodley, *Self Advocacy in the Lives of People with Learning Disabilities* (Open University Press, 2000), at 81.Studies of the kind undertaken in this dissertation are an important step in giving a voice to VWD. One victim expressed that s/he was “very relieved to be finally given a voice”. [↑](#footnote-ref-37)
38. National Disability Authority, *Exploring Advocacy - Full Report*, (NDA, 2008) <<http://www.nda.ie/cntmgmtNew.nsf/0/666A6A86EBA5B64180256D9E005EAF8D?OpenDocument>> (visited 28 September 2013). [↑](#footnote-ref-38)
39. #  Katherine Quarmby, “Media reporting and disability hate crime” in Roulstone, and Mason-Bish eds. *Disability, Hate Crime and Violence* (Routledge, 2012), at 69.

 [↑](#footnote-ref-39)
40. Such as the Criminal Evidence Act\_\_. [↑](#footnote-ref-40)
41. Edwards, note 10, at 3. [↑](#footnote-ref-41)
42. Edwards, note 10, at 12. [↑](#footnote-ref-42)
43. Walklate, note 66. [↑](#footnote-ref-43)
44. Labelling theory has its origins in criminology, but has also been used in in terms of the status and labelling of the term ‘victim’. Scott Kenney, “Victims of crime and labeling theory: A parallel process*?”* (2002)23 *Deviant Behavior: An Interdisciplinary Journal*; Shelly E. Taylor., Joanne V. Wood, and Rosemary R. Lichtman, “Selective Evaluation Response To Victimization” 39 (1983) *Journal of Social Issues* 2 <<http://taylorlab.psych.ucla.edu/1983_It%20Could%20Be%20Worse_Selective%20Evaluation%20as%20a%20Response%20to%20Victimization.pdf>> (visited 22 November 2013). [↑](#footnote-ref-44)
45. Chomba Wa Munyi, “Past and Present Perceptions Towards Disability: A Historical Perspective”

 (2012) 32 2 *Disability Studies Quarterly* <<http://dsq-sds.org/article/view/3197/3068>> (visited 22 January 2014). [↑](#footnote-ref-45)
46. SUORA/INFRA at tertiary victimisaiton, [↑](#footnote-ref-46)
47. Jan Van Dijk, “Free The Victim: A Critique Of The Western Conception of Victimhood” (2009) 16 *International Review of Victimology*, at 21. [↑](#footnote-ref-47)
48. For an extensive review of legislative provisions affecting VWD see Kilcommins, Edwards, and Harold, note 3, at 25-44. [↑](#footnote-ref-48)
49. Section 5 Criminal Justice Act 1993. [↑](#footnote-ref-49)
50. Guiry, note X, at 4. [↑](#footnote-ref-50)
51. Section 6 of the Criminal Justice Act 1993. [↑](#footnote-ref-51)
52. Kilcommins, Edwards, and Harold, note 3, note 3; Padrón, note 6. [↑](#footnote-ref-52)
53. Chih Hoong Sin, Annie Hedges, Chloe Cook, Nina Mguni, and Natasha Comber, *Disabled People’s Experiences of Targeted Violence and Hostility* (2009, Office of Public Management), at ­­87. National Disability Association, *A Strategy for Equality*, (NDA, 1996) <[http://www.nda.ie/website/nda/cntmgmtnew.nsf/0/9007E317368ADA638025718D00372224/$File/strategy\_for\_equality\_18.htm](http://www.nda.ie/website/nda/cntmgmtnew.nsf/0/9007E317368ADA638025718D00372224/%24File/strategy_for_equality_18.htm)> (visited 24 November 2013); Office for Disability Issues, *Disability Facts and Figures: An Overview of Official UK Disability Statistics from the Office for Disability Issues* <<http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php#js>> (visited 23 October 2013); Erika Harrell and Michael Rand, *National Crime Victimization Survey:* *Crime Against People with Disabilities, 2008* <<http://www.miusa.org/idd/resources/files/pwdviolenceresources/crimeagainstpwd/at_download/file>> (visited 23 October 2013). [↑](#footnote-ref-53)
54. Central Statistics Office, *Garda Recorded Crime Statistics 2006-2010* (CSO, 2010) <<http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2010/gardacrimestats_2010.pdf>> (visited 02 November 2012). [↑](#footnote-ref-54)
55. INFRA/SUPRA UNDERREPORTING. [↑](#footnote-ref-55)
56. Home Office, *British Crime Survey 2010/11* at 48, <<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116417/hosb1011.pdf>> (visited 27 December 2013). [↑](#footnote-ref-56)
57. Padrón, note 6. Please note that by measuring violence it does not capture all types of crimes, but does capture unreported violent crimes. [↑](#footnote-ref-57)
58. *Ibid.* [↑](#footnote-ref-58)
59. Michael R. Rand and Jayne E. Robinson - *Bureau of Justice Statistics* *Criminal Victimization in the United States*, *2008* <[http://www.bjs.gov/index.cfm?ty=pbdetailandiid=2218](http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2218)> (visited 23 January 2014). [↑](#footnote-ref-59)
60. According to the World Health Organisation “prevalence of sexual abuse against people with disabilities has been shown to be higher), especially for institutionalized men and women with intellectual disabilities.” World Health Organization, *World report on disability* (WHO, 2011). WHO, *World report on violence and health*, at chapter 6. Michelle McCarthy *Sexuality and women with learning disabilities*. (Jessica Kingsley Publishers, 1999).

42. Nicholas Guy Peckham, “The vulnerability and sexual abuse of people with learning disabilities”, (2007) 35 *British Journal of Learning Disabilities 131*. [↑](#footnote-ref-60)
61. WORLD HEALTH ORGANIZATION, *Guidelines For Medico-Legal Care For Victims Of Sexual Violence* (WHO, 2003), at 12. <http://whqlibdoc.who.int/publications/2004/924154628X.pdf?ua=1>> (visited 29 December 2013). [↑](#footnote-ref-61)
62. Law Reform Commission *Sexual Offences and Capacity to Consent: Consultation Paper*. LRC CP 63 – 2011. [↑](#footnote-ref-62)
63. NDA?? [↑](#footnote-ref-63)
64. Arrayan, note 45. [↑](#footnote-ref-64)
65. Quarmby, note 40, at 34. [↑](#footnote-ref-65)
66. US Office for Victims of Crime, *Working with Victims of Crime with Disabilities*. <<https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm>> (visited 16 January 2014). [↑](#footnote-ref-66)
67. Nils Christie, “Ideal Victim” in Ezzat A Fattah ed., *From Crime Policy to Victim Policy: Reorienting the Justice System* (Macmillan, 1986). In reality, Christie’s ideal victim hypothesis has not proven correct empirically under certain circumstances. For a criticism *see* James Dignan, *Understanding Victims and Restorative Justice* (Open University Press, 2005). [↑](#footnote-ref-67)
68. # Andrew Karmen, *Crime Victims: An Introduction to Victimology* (Cengage Learning, 2012), at 353.

 [↑](#footnote-ref-68)
69. Shane Kilcommins speaking at the launch of Shane Kilcommins, Claire Edwards and Tina O’Sullivan, *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime* (ICCL, 2014). [↑](#footnote-ref-69)
70. *Supra* at A. para 1 [↑](#footnote-ref-70)
71. Chih Hoong Sin, “Making disabilitist hate crime invisible”, in Alan Roulstone and Hannah Mason-Bish eds., *Disability, Hate Crime and Violence* (Routledge, 2012), at 155. [↑](#footnote-ref-71)
72. The author is applying contemporary victimological thinking of the Proximity hypothesis. Tim Hope, “Theory and Method: the Social Epidemiology of Crime Victims” in Walklate ed., *Handbook of Victims and Victimology* (Routledge, 2012), at 71; Prakash Talwar, *Victimology* (Gyan Books, 2006), at 33. [↑](#footnote-ref-72)
73. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 57. [↑](#footnote-ref-73)
74. Kilcommins, Edwards, and Harold, note 3, at 56. [↑](#footnote-ref-74)
75. Leigh Ann Davis, "*People with Intellectual Disabilities and Sexual Violence*- Q&A” <<http://disabilities.temple.edu/programs/justice/docs/bibliographyScans/Davis%203.pdf>> (visited 20 January 2013). [↑](#footnote-ref-75)
76. Rape Crisis Network Ireland, *Sexual Violence Against People with Disabilities: Data Collection and Barriers to Disclosure* (RCNI 2011), at 36. <<http://www.rcni.ie/wp-content/uploads/SexualViolenceAgainstPeopleWithDisabilities2011.pdf>> (visited 28 September 2013). This approach moves away from the ‘ideal’ victim and perpetrator being strangers as advocated by Christie, note 27. *See* Dignan, note 27. Indeed, Quarmby has found that the majority of perpetrators are known to VWD. This is also reflected in the three Case Studies. Katharine Quarmby, *Getting Away With Murder: Disabled People’s Experiences of Hate Crime in the UK* (Scope London, 2008). <<http://www.scope.org.uk/sites/default/files/pdfs/Campaigns_policy/Scope_Hate_Crime_Report.pdf>> (visited 27 September). Bob McCormack, Denise Kavanagh, Shay Caffrey, and Anne Power “Investigating Sexual Abuse: Findings of a 15-Year Longitudinal Study” (2005) 18 Journal of Applied Research in Intellectual Disabilities 217, at 222. Rape Crisis Network Ireland, *Sexual Violence Against People with Disabilities: Data Collection and Barriers to Disclosure* (RCNI 2011), at 36. <<http://www.rcni.ie/wp-content/uploads/SexualViolenceAgainstPeopleWithDisabilities2011.pdf>> (visited 28 September 2013). [↑](#footnote-ref-76)
77. Lawrence Cohen and Marcus Felson “Social Change and Crime Rate Trends: A Routine Activities Approach” *American Sociological Review,* 1979, *44:588-608* <<http://www.jstor.org/stable/2094589>*>* (visited 20 October 2013). While their approach can be seen as leaning towards victim precipitation or victim blaming, echoing the positivist approach by the early victimologists, as argued by Akers; it nonetheless can be used in this way to shed another perspective on why the disability community suffer disproportionate victimisation. It has been traditionally used in its application to any crime, by assessing the situation in which the crime has occurred. Ronald Akers *Criminological Theories: Introduction, Evaluation, and Application* (4th ed., Roxbury Publishing Company, 2004), at 87. [↑](#footnote-ref-77)
78. *Infra,* at \_\_ LABELLING [↑](#footnote-ref-78)
79. Office for Disability Issues, *Public Perceptions of Disabled People : Evidence from the British Social Attitudes Survey 2009* (Office for Disability Issues, 2011), at 25. < <http://odi.dwp.gov.uk/docs/res/ppdp/ppdp.pdf>> (visited 22 December 2013). [↑](#footnote-ref-79)
80. Donna Lero, Carolyn Pletsch, and Margo *Hilbrecht*“Introduction to the Special Issue on Disability and Work: Toward Re-Conceptualizing the 'Burden' of Disability”32 (2012) *Disability Studies Quarterly* 3. <<http://dsq-sds.org/article/view/3275/3108>> (visited 16 November 2013). [↑](#footnote-ref-80)
81. INFRA/SUPRA [↑](#footnote-ref-81)
82. Adolf Ratzka, *Independent Living for people with disabilities: from patient to citizen and customer* (Independent Living Institute, 2007), at 6. <<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1426&context=gladnetcollect>> (visited 14 February 2014). [↑](#footnote-ref-82)
83. Jennings, note 11. [↑](#footnote-ref-83)
84. Kari Arrayan, *Disability Justice Initiative: Technical Report #1: Review of the Literature*, (ND State Council on Developmental Disabilities, 2003), at 4. <<http://disabilities.temple.edu/programs/justice/docs/bibliographyScans/Arrayan%201.pdf>> (visited 04 January 2013). [↑](#footnote-ref-84)
85. Law Reform Commission, *Report on Sexual Offences and Capacity to Consent* LRC 109-2013, at 76. <<http://www.lawreform.ie/_fileupload/Reports/r109.pdf>> (visited 13 January 2014). [↑](#footnote-ref-85)
86. Padrón, note 6. [↑](#footnote-ref-86)
87. Edwards, note 10, at 6. [↑](#footnote-ref-87)
88. Daphne, note 168, at 6. [↑](#footnote-ref-88)
89. Stephanie Yearnshire, “Rape Victimology” <<http://www.aic.gov.au/media_library/conferences/policewomen3/yearnshire2.pdf>> (visited 29 January 2014); Canadian Resource Centre for Victims of Crime, *Victim Blaming*, at 4. <<http://www.aic.gov.au/media_library/conferences/policewomen3/yearnshire2.pdf>> (visited 28 January 2014). [↑](#footnote-ref-89)
90. Michigan Disability Rights Coalition, note 167. Quarmby, note 40, at 34. [↑](#footnote-ref-90)
91. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 80. [↑](#footnote-ref-91)
92. US Office for Victims of Crime, note 43. [↑](#footnote-ref-92)
93. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at vi. *See* Moras’ comparison of the reaction to crimes by rape victims and those with disabilities. Rebekah Moras, “Feminism, Rape Culture” in Matthew Wappett and Katrina Arndt eds., *Emerging Perspectives on Disability Studies* (Palgrave Macmillan, 2013), at 194. [↑](#footnote-ref-93)
94. William Ryan, *Blaming the Victim*(Pantheon Books, 1971), at 28. [↑](#footnote-ref-94)
95. Pan Thomas, “‘Mate crime’: ridicule, hostility and targeted attacks against disabled people”, 26 (2011) 1 *Disability & Society* 107. [↑](#footnote-ref-95)
96. Arrayan, note 45. [↑](#footnote-ref-96)
97. *See* Inclusion Ireland, *A Guide to Disability Law and Policy in Ireland*, at 10. <<http://www.inclusionireland.ie/sites/default/files/documents/information_pack-final.pdf>> (visited 27 September 2013). [↑](#footnote-ref-97)
98. Disability Federation Ireland, “Disability in Ireland: Some Facts and Figures”. <<http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Disability-FactSheet.pdf>> (visited 29 December 2013). [↑](#footnote-ref-98)
99. OECD, *Sickness, Disability and Work: Keeping On Track in the Economic Downturn* (OECD, 2009), at 35. <<http://www.oecd.org/els/emp/42699911.pdf>> (visited 02 October 2013). [↑](#footnote-ref-99)
100. Cohen and Felson, note 35. [↑](#footnote-ref-100)
101. National Research Council, *Crime Victims with Developmental Disabilities: Report of a Workshop* (National Research Council 2001), at 1. <[http://www.nap.edu/openbook.php?record\_id=10042andpage=1](http://www.nap.edu/openbook.php?record_id=10042&page=1)> (visited 19 January 2014). [↑](#footnote-ref-101)
102. *Supra*, at \_\_. [↑](#footnote-ref-102)
103. Dignan, note 27. [↑](#footnote-ref-103)
104. Kilcommins, Edwards, and Harold, note 3, at 13. [↑](#footnote-ref-104)
105. Nathan Hall, *Hate Crime* (Routledge, 2013), at 2. [↑](#footnote-ref-105)
106. However, those that have experienced hate crimes tend to experience repeat victimisation (*infra,* at REPEAT). [↑](#footnote-ref-106)
107. Harrell and Rand, note 22. [↑](#footnote-ref-107)
108. Kilcommins, Edwards, and Harold, note 3, at vi. [↑](#footnote-ref-108)
109. Michael McClintock, *Everyday Fears A Survey of Violent Hate Crimes in Europe and North America*, at 59. <<http://www.humanrightsfirst.org/wp-content/uploads/pdf/everyday-fears-080805.pdf>> (visited 08 January 2013). Although there is some form of hate crime legislation in relation to other minority groups under The Prohibition of Incitement to Hatred Act 1989; there is no reference made to the disability community. [↑](#footnote-ref-109)
110. *Đorđević v Croatia* IHRL 1912 (ECHR 2012).

 <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112322#{"itemid":["001-112322"]}>> (visited 16 January 2013). [↑](#footnote-ref-110)
111. Section 146 of the Criminal Justice Act 2003. [↑](#footnote-ref-111)
112. Criminal Justice (no.2) (NI) Order 2004. [↑](#footnote-ref-112)
113. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. [↑](#footnote-ref-113)
114. Edwards, note 10, at 5. [↑](#footnote-ref-114)
115. Jemma Tyson, “A Scar on the Conscience of the Criminal Justice System? An Examination of Police Service Provision Through the Eyes of People with Learning Disabilities”, at 54. < <http://www.report-it.org.uk/files/jemma_tysons_ma_thesis_disability_hate_crime.pdf>> (visited 02 February 2014). [↑](#footnote-ref-115)
116. James B. Jacobs and Kimberly Potter, *Hate Crimes : Criminal Law & Identity Politics: Criminal Law & Identity Politics* (Oxford University Press, 2000), at 91. [↑](#footnote-ref-116)
117. Rafaela M. Dancygier and Donald P. Green, “Hate Crime” in John F Dovidio, Miles Hewstone, Peter Glick, and Victoria M Esses eds., *The SAGE Handbook of Prejudice, Stereotyping and Discrimination* (SAGE, 2010), at 307. Organization for Security and Co-operation in Europe, *Hate Crime Laws: A Practical Guide* (OSCE, 2009) <<http://www.osce.org/odihr/36426?download=true>> (visited 14 January 2014). [↑](#footnote-ref-117)
118. Sarah McDonald, *EU Court Shines Light On Disability Hate Crime* < <http://www.lawsociety.ie/Documents/Gazette/Gazette%202012/august-september2012.pdf> > (visited 21 November 2013). [↑](#footnote-ref-118)
119. “Victimisation is a good, arguably the best readily available, predictor of future victimisation”. Andromachi Tseloni and Ken Pease, “Repeat Personal Victimization. ‘Boosts’ or ‘Flags’?” British Journal of Criminology (2003) 43 (1): 196-212. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 18. [↑](#footnote-ref-119)
120. Sandra Walklate, *Imagining the Victim Of Crime* (McGraw-Hill, 2006). [↑](#footnote-ref-120)
121. Directive 2012/29/EU of the European Parliament and of The Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ L 315/57 14 November 2012 (**the** **Victims’ Rights Directive**). [↑](#footnote-ref-121)
122. “(P)eople with health problems or disabilities are likely to face greater difﬁculties in leaving an abusive relationship.” Dorothy Watson and Sara Parsons, *Domestic Abuse of Women and Men in Ireland: Report on the National Study of Domestic Abuse* (National Crime Council in association with the ESRI, 2005), at 145. <<http://www.crimecouncil.gov.ie/downloads/Abuse_Report_NCC.pdf>> (visited 9 October 2013). [↑](#footnote-ref-122)
123. This was a trend not adequately addressed in the literature. The literature tends to focus on repeat victimisation in scenarios where a victim experiences victimisation by one perpetrator, then experiences another crime at the hands of another perpetrator. [↑](#footnote-ref-123)
124. According to an outdated study by Whelan and O’Connell in 1994. Michael O'Connell and Anthony Whelan “Crime Victimisation in Dublin”, (1994) 4 *Irish Criminal Law Journal* 85. Compare with international reporting statistics - Anna Alvazzi del Frate, “The Voice Of Victims Of Crime: Estimating The True Level Of Conventional Crime” 3 (2003) *Forum on Crime and Society*, at 134<http://www.unodc.org/pdf/crime/forum/forum3_note4.pdf>> (visited 02 November 2013). [↑](#footnote-ref-124)
125. Wesley G. Skogan, “Dimensions of the Dark Figure of Unreported Crime” (1977) January *Crime & Delinquency*, at 46. < <http://skogan.org/files/Dimensions_of_Dark_Figure_of_Unreported_Crime.pdf>> (visited 04 November 2013). [↑](#footnote-ref-125)
126. Mike Maguire, “Crime statistics, patterns and trends: Changing perceptions and their implications” in Maguire, Morgan and Reiner eds., *The Oxford Handbook of Criminology (*1997, Clarendon Press). For an Irish context *see* Shane Kilcommins, Ian O’Donnell, Eoin O’Sullivan, and Barry Vaughan *Crime, Punishment and the Search for Order in Ireland* (Institute of Public administration, 2004), at 103. [↑](#footnote-ref-126)
127. Kilcommins, Edwards, and Harold, note 3, at 55. [↑](#footnote-ref-127)
128. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 57. [↑](#footnote-ref-128)
129. House of Commons Joint Committee on Human Rights, *A Life Like Any Other? Human rights of adults with learning disabilities*. (House of Lords, 2008). Joan Petersilia, “Crime Victims with Developmental Disabilities: A review essay”, (2001) 28 *Criminal Justice and Behaviour* 6. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 56. [↑](#footnote-ref-129)
130. Kilcommins, Edwards, and Harold, note 3, at 56; Edwards, note 10, at 5; Barbro Lewin, “Who Cares About Disabled Victims of Crime? Barriers and Facilitators for Redress”, (2007) 4 *Journal of Policy and Practice in Intellectual Disabilities* 3, at 170. [↑](#footnote-ref-130)
131. Quarmby, note 40, at 12. [↑](#footnote-ref-131)
132. US Office for Victims of Crime, note 43. [↑](#footnote-ref-132)
133. This fear is not unfounded according to the current study *Infra,* at *\_\_\_*ACTUAL EXPEREINCE. *See* Quarmby, note 40, at 14. Also *see* Mencap, *Living in Fear*, (Mencap, 2000). [↑](#footnote-ref-133)
134. *Infra*, at \_\_\_ TRIAL STAGE V END. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 56. [↑](#footnote-ref-134)
135. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 58; *see* CSO, note X approx. 118?. EQUALITY [↑](#footnote-ref-135)
136. *Ibid*, at 56. This is especially the case if, by virtue of the disability, the victim has communication issues. Commission to Inquire into Child Abuse**, Chapter 13 “**Special needs schools and residential services”, in ***Final Report of the Commission to Inquire into Child Abuse* (CICA, 2009), at 1**4. < <http://www.childabusecommission.com/rpt/pdfs/CICA-VOL3-13.pdf>> (visited 20 November 2013). [↑](#footnote-ref-136)
137. Kilcommins, Edwards, and Harold, note 3, at 56. [↑](#footnote-ref-137)
138. *Supra,* at \_\_\_IDEAL. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 56. [↑](#footnote-ref-138)
139. Lewin, note 83, at 174. There is a “blurring of responsibilities between social care agencies and the criminal justice sector in relation to monitoring crimes against vulnerable people”. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 89. [↑](#footnote-ref-139)
140. Aside from the fact that VWD have a clear right to criminal justice just like any other victim; the independence and thoroughness of third party investigations, and their vested interests interest of protecting the image of the organisation such as the Catholic Church in the child sex abuse scandals, was questioned in the RYAN REPORT?? CITATION . Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at vii, and 53. Commission to Inquire into Child Abuse, ***Final Report of the Commission to Inquire into Child Abuse* (CICA, 2009).**  [↑](#footnote-ref-140)
141. Arrayan, note 45, at 12. [↑](#footnote-ref-141)
142. Jim Winters, speaking at the launch of Shane Kilcommins, Claire Edwards and Tina O’Sullivan, *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime,* (ICCL, 2014). [↑](#footnote-ref-142)
143. Winters, note 136>?? / ibid. Article 13 (1) UNCRPD. [↑](#footnote-ref-143)
144. For example *see* the reckless endangerment of a child criminal offence under section 176 Criminal Justice Act 2006, which is a similar provision to the Withholding Information Act but pertains only to children. [↑](#footnote-ref-144)
145. Ipsos MORI / Mencap, *Personal Safety Fears of People With Disabilities* (Ipsos MORI, 2007). <<http://www.ipsos-mori.com/researchpublications/researcharchive/176/Personal-Safety-Fears-of-People-With-Disabilities.aspx>> (visited 02 November 2013). [↑](#footnote-ref-145)
146. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 65. [↑](#footnote-ref-146)
147. Kilcommins, Edwards, and Harold, note 3, at 54. [↑](#footnote-ref-147)
148. Lewin, note 83, at 171. [↑](#footnote-ref-148)
149. Kilcommins, Edwards, and Harold, note 3, at 54. [↑](#footnote-ref-149)
150. *Ibid*, at 68. [↑](#footnote-ref-150)
151. The provision of accessible materials is required by s. 28 of the Disability Act 2008, and will also be required under Article 3 (3) of the Victims’ Rights Directive. [↑](#footnote-ref-151)
152. Kilcommins, Edwards, and Harold, note 3, at 63. [↑](#footnote-ref-152)
153. Quarmby, note 40, at 12. See SUPRA/INFRA???? BALANCE [↑](#footnote-ref-153)
154. [↑](#footnote-ref-154)
155. Kilcommins, Edwards, and Harold, note 3 , at 132; The Courts’ Disabilities Committee, *Making Ontario’s Courts Fully Accessible to Persons with Disabilities*, (The Courts’ Disabilities Committee, 2006)

<<http://www.ontariocourts.ca/accessible_courts/en/report_courts_disabilities.htm>> (visited 29 December 2013). [↑](#footnote-ref-155)
156. Lewin, note 83. [↑](#footnote-ref-156)
157. Kilcommins, Edwards, and Harold, note 3, at 61. [↑](#footnote-ref-157)
158. Mandy Burton, Roger Evans, and Andrew Sanders, “Are Special Measures for Vulnerable Intimidated Witnesses Working? Evidence from the Criminal Justice Agencies”. (Home Office, 2006), at 3. <<http://core.kmi.open.ac.uk/download/pdf/16250>> (visited 09 January 2014). [↑](#footnote-ref-158)
159. *Ibid*, at vi. [↑](#footnote-ref-159)
160. Kilcommins, Edwards, and Harold, note 3, at 60. [↑](#footnote-ref-160)
161. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 55. [↑](#footnote-ref-161)
162. Edwards, note 10, at 12. [↑](#footnote-ref-162)
163. *Infra*, at \_\_ LABELLING. [↑](#footnote-ref-163)
164. To discover the basis for stigma surrounding mental disability that explains the reluctance to disclose such an illnesses *see* Erving Goffman, *Stigma: Notes on the Management of a Spoiled Identity*, (Penguin Books, 1963). [↑](#footnote-ref-164)
165. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 67. [↑](#footnote-ref-165)
166. Kilcommins, Edwards, and Harold, note 3, at 60. [↑](#footnote-ref-166)
167. Geraldine Monaghan and Mark Pathak, “Silenced Witnesses”, (2000) 27 *Community Care*. [↑](#footnote-ref-167)
168. Quarmby, note 40, at 13. [↑](#footnote-ref-168)
169. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 70. [↑](#footnote-ref-169)
170. See for example the *Laura Kelly case* (unreported) where the case did get to trial, but did not proceed as a result of the court finding a lack of capacity on the part of the victim who had an intellectual disability in regards to the giving of evidence. In the UK, in relation to hate crime, in one year alone “42 disability-related cases never reached trial. One of the key reasons for this was the view that the victim was considered to be an unreliable witness.”… “Tellingly, 31% of all those prosecuted for disability hate crimes were acquitted, compared to just 13.2% of people prosecuted for all crimes.”Quarmby, note 40, at 13. [↑](#footnote-ref-170)
171. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 67. Sally Gillen, “Linking the Assessment of Self-Reported Functional Capacity With Abuse Experiences of Women With Disabilities”, (2007) 1 *Community Care* 692. [↑](#footnote-ref-171)
172. *Infra,* at \_\_\_ LABELLING. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 68. [↑](#footnote-ref-172)
173. Kilcommins, Edwards, and Harold, note 3. [↑](#footnote-ref-173)
174. Burton, Evans and Sanders, note 111, at 2. ‎ [↑](#footnote-ref-174)
175. *Infra*, at \_\_\_ LABELLING SOCIAL MODEL. [↑](#footnote-ref-175)
176. Edwards, note 10, at 8. [↑](#footnote-ref-176)
177. The current traditional method of cross examining is currently under review for vulnerable victims in England and Wales. Victim Support, “Cross-examination of vulnerable victims to be reviewed”. <<http://www.victimsupport.org.uk/about-us/news/2013/07/crossexamination-of-vulnerable-victims-to-be-reviewed>> (visited 02 January 2014). [↑](#footnote-ref-177)
178. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22. [↑](#footnote-ref-178)
179. Judicial College, *Equal Treatment Bench Book* (Judicial College, 2013), at 71. <<http://www.judiciary.gov.uk/Resources/JCO/Documents/judicial-college/equal-treatment-bb-2013.pdf>> (visited 03 January 2014). In the *Laura Kelly* case (unreported), a competency determination was made in the case of an alleged sexual assault. The Court found the victim who had Down Syndrome failed the competency test, which the mother claimed was based upon irrelevant questions such as days and colours. Juno McEnroe, “Family want ‘archaic’ law overhauled”.

<<http://www.irishexaminer.com/ireland/icrime/family-want-archaic-law-overhauled-115886.html>> (visited 29 December 2013). [↑](#footnote-ref-179)
180. Gisli Gudjonsson, Glynis Murphy and Isabel Clare, “Assessing the capacity of people with intellectual disabilities to be witnesses in court” (2000) Psychological Medicine 30, at 313. [↑](#footnote-ref-180)
181. NDA, note 22. [↑](#footnote-ref-181)
182. Crown Prosecution Service, “Competence and Compellability” <

 <http://www.cps.gov.uk/legal/a_to_c/competence_and_compellability/>> (visited 29 December 2013). [↑](#footnote-ref-182)
183. S.27(3). *See* for *e.g. O’Sullivan v Hamill* [1999] 2 IR 9. [↑](#footnote-ref-183)
184. S.27(1). [↑](#footnote-ref-184)
185. In *O'D. v the DPP* *and anor* [2009] IEHC 559 the High Court quashed the trial judge’s decision to allow two victims with intellectual disabilities to give their evidence by live video-link. The reason for quashing the decision was an insufficient risk of unfairness resulting in injustice without the live video-link. We can see here that the accused-centred approach of the Irish courts remains strong. [↑](#footnote-ref-185)
186. S.14(1). [↑](#footnote-ref-186)
187. For example the equivalent test in England “is not failed because the forensic techniques of the advocate or court processes have to be adapted to enable witnesses to give the best evidence of which they are capable (R v B [2010] EWCA Crim 4).” Judicial College, note 132, at 52. [↑](#footnote-ref-187)
188. Gudjonsson, Murphy and Clare, note 133, at 313. [↑](#footnote-ref-188)
189. Judicial College, note 132, at 55. [↑](#footnote-ref-189)
190. *Ibid,* at 60. [↑](#footnote-ref-190)
191. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 69. [↑](#footnote-ref-191)
192. Theresa Joyce, “Assessing Capacity to Consent and to Give Evidence” (NHS Trust, 2012), at 37. <<http://www.nomasabuso.com/wp-content/uploads/2012/06/theresa_joyce_1Ponencia8.pdf>> (visited 01 December 2013). Andrew Sanders, Jane Creaton, Sophia Bird and Leanne Webe, Witnesses with Learning Disabilities. (Home Office Research and Statistics Directorate, 1996). <<http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs/r44.pdf>> (visited 29 December 2013). [↑](#footnote-ref-192)
193. Mark Kebbell, Chris Hatton, and Shane Johnson, *Witnesses with Learning Disabilities in Court: Full Report of Research Activities and Results,* (University of Birmingham, 2000). [↑](#footnote-ref-193)
194. National Disability Authority, *NDA submission on Capacity and Sexual Relations in the context of the Mental Capacity Scheme of Bill* (NDA, 2009). [↑](#footnote-ref-194)
195. Kilcommins, Edwards, and Harold, note 3, at 51. [↑](#footnote-ref-195)
196. Alan Shatter, “Services for People with Disabilities” 688Dáil Debates col. (11 June 2013). [↑](#footnote-ref-196)
197. Quarmby, note 40, at 15. [↑](#footnote-ref-197)
198. While Kilcommins, Edwards and Harold (note 3)deal with ‘Post-trial Experiences’, their discussion relates to issues such as the witness impact statement, compensation and life after the trial.The following section deals more with the effect the crime and interaction with the CJS, which we will discover results in a concept the author calls tertiary victimisation. [↑](#footnote-ref-198)
199. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 88-89. [↑](#footnote-ref-199)
200. #  Ipsos MORI / Mencap, note 99.

 [↑](#footnote-ref-200)
201. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 43. [↑](#footnote-ref-201)
202. A similar finding was found in: Office for Disability Issues (note 22). Also *see* Kilcommins, Edwards, and Harold, note 3, at 14; Quarmby, note 40, at 11. [↑](#footnote-ref-202)
203. Home Office, note X (BRITISH CRIEM SURVEY), at 99. [↑](#footnote-ref-203)
204. Sanders, Creaton, Bird, and Weber, note 147. [↑](#footnote-ref-204)
205. Walklate, note 66, at 111. [↑](#footnote-ref-205)
206. The author came up with the hypothesis of “tertiary victimisation” to describe this phenomenon. However, subsequent research conducted by the author found that the term tertiary victims has been used in a limited amount of literature to refer to:

 victims who suffer by witnessing crime through the media. Edna Erez “Protracted War, Terrorism and Mass Victimisation” in Ewald and Turković eds., *Large-scale Victimisation as a Potential Source of Terrorist Activities***:***Importance of Regaining Security in Post-conflict Societies* (IOS Press, 2006), at 93.

the public as the victim for example in regulatory offences. Simon I. Singer, “Victim Categories of Crime Revisited” in Wolfgang and Silvermaneds., *Crime and Justice at the Millennium: Essays by and in Honor of Marvin E. Wolfgang.* (Springer, 2002) at 168 and Walklate, note 66, at 29. [↑](#footnote-ref-206)
207. Kilcommins, Edwards, and Harold, note 3, at 18. [↑](#footnote-ref-207)
208. Shakespeare argues that disability is a powerful identity. Tom Shakespeare, “Disability, identity and difference” in. Barnes and Mercer eds., *Exploring the Divide: Illness and Disability*, at 109. (The Disability Press, 1996). [↑](#footnote-ref-208)
209. For example some victims groups prefer the term survivor. Sharon Lamb, “Constructing the Victim: Popular Images and Lasting Labels” in *New Versions of Victims: Feminists Struggle With the Concept*, ed. Sharon Lamb. (New York University Press, 1999), at 119. [↑](#footnote-ref-209)
210. Quarmby, note 40, at 32. [↑](#footnote-ref-210)
211. Quarmby, note 40, at 8. [↑](#footnote-ref-211)
212. Candace Clark “Sympathy Biography and Sympathy Margin” 93( 1987) *American Journal of Sociology* 2. <<http://www.jstor.org/stable/2779586>> (visited 30 November 2013). [↑](#footnote-ref-212)
213. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 89. [↑](#footnote-ref-213)
214. US Office for Victims of Crime, note 43. [↑](#footnote-ref-214)
215. In Case Study 2, the victim felt the CJS agencies “don’t need to advertise” that a disability is being accommodated for. [↑](#footnote-ref-215)
216. [↑](#footnote-ref-216)
217. Note that the legislative provisions under the 1996 Evidence Act are primarily directed at solving issues around children. [↑](#footnote-ref-217)
218. The consequences of failing to accommodate, not only cause severe personal difficulties and prevent access to justice, but the criminal justice agencies at fault may be liable for investigation and fines under the Disability Act 2005 regarding access to buildings, information and services. [↑](#footnote-ref-218)
219. An Garda Síochána, *An Garda Síochána Victims’ Charter <*<http://www.garda.ie/Documents/User/An%20Garda%20S%C3%ADoch%C3%A1na%20Victims%20Charter%20English%20Version.pdf>> (visited 08 December 2013). [↑](#footnote-ref-219)
220. *Infra,* at \_\_\_ BALANCE. [↑](#footnote-ref-220)
221. There is statutory basis for differential treatment on account of a person’s disability under s. 14 of the Equal Status Act 2000. [↑](#footnote-ref-221)
222. House of Commons Joint Committee on Human Rights, at 69. [↑](#footnote-ref-222)
223. Michigan Disability Rights Coalition, “Models of Disability” <<http://www.copower.org/models-of-disability.html>> (visited 13 November 2013). [↑](#footnote-ref-223)
224. Hannah Sharp, “Steps Towards Justice for People with Learning Disabilities as Victims of Crime: The important role of the police”, (2001) 29 *British Journal of Learning Disabilitie*s 3. [↑](#footnote-ref-224)
225. Hoong Sin, Hedges, Cook, Mguni and Comber, note 22, at 55. [↑](#footnote-ref-225)
226. Quarmby, note 40, at 60. [↑](#footnote-ref-226)
227. Judicial College, note 132, at 68. [↑](#footnote-ref-227)
228. Similar to the English legislation Youth Justice and Criminal Evidence Act 1999. The language of vulnerability, that all people with disabilities have some pre-existing vulnerability has come under criticism. *See* Quarmby, note 40, at 33. In this manner the author would propose a change to "victims with specific needs”. European Parliament, *Report on the proposal for a directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime* (European Parliament, 2012). <[http://www.europarl.europa.eu/sides/getDoc.do?type=REPORTandreference=A7-2012-0244andlanguage=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0244&language=EN)> (visited 22 December 2013). [↑](#footnote-ref-228)
229. Ivana Bacik, Liz Heffernan, Patricia Brazil and Marguerite Woods, “Report on Services and Legislation Providing Support for Victims of Crime” (VSVC, 2007), at 10 and 43. <<http://www.csvc.ie/en/CSVC/Research%20Document.doc/Files/Research%20Document.doc>> (visited 06 December 2013). [↑](#footnote-ref-229)
230. Sarah Medford, Gisli Gudjonsson, and John Pearse, “The Identification of Persons at Risk in Police Custody: The appropriate adults by the Metropolitan Police”. (Metropolitan Police, 2000). [↑](#footnote-ref-230)
231. Rape Crisis Network, *RCNI Submission on Proposed Heads of Forthcoming Victims’ Rights Bill 2011* (RCNI, 2011), at 16. <<http://www.rcni.ie/wp-content/uploads/RCNISubmissiononProposedHeadsofVictimsRightsBill2011June11.pdf>> (visited 01 November 2013). [↑](#footnote-ref-231)
232. Kilcommins, Edwards, and Harold, note 3, at 64. [↑](#footnote-ref-232)
233. *Ibid*, at 63. [↑](#footnote-ref-233)
234. *Ibid*, at 55 and 59. [↑](#footnote-ref-234)
235. The family of the victim in the *Laura Kelly* case (Note 132) felt training was required for the Gardaí, judiciary and legal professionals. [↑](#footnote-ref-235)
236. Department of Justice, *Response to Garda Inspectorate Report on Responding to Child Sexual Abuse,*(Department of Justice, 2010),at 5. <[http://www.justice.ie/en/JELR/Response%20to%20Garda%20Inspectorate%20Report%20-%201%20Feb%202012.pdf](http://www.justice.ie/en/JELR/Response%20to%20Garda%20Inspectorate%20Report%20-%201%20Feb%202012.pdf/Files/Response%20to%20Garda%20Inspectorate%20Report%20-%201%20Feb%202012.pdf)> (visited 14 November 2013). [↑](#footnote-ref-236)
237. Kilcommins, Edwards, and Harold, note 3, at 59-60. [↑](#footnote-ref-237)
238. This matches a wider societal issue with people generally feeling uncomfortable interacting with those with disabilities. Office for Disability Issues, note37, at 35. [↑](#footnote-ref-238)
239. Lewin, note 83. [↑](#footnote-ref-239)
240. Gardaí HQ Directive 186/08 as quoted in An Garda Siochána Communique *Women In Policing “Celebrating The Past – Embracing The Future*”. <<http://www.garda.ie/Documents/User/Communique%20Final%20DEC%2009%20Reduced.pdf>> (visited 03 January 2014). [↑](#footnote-ref-240)
241. De Londras, note 3. [↑](#footnote-ref-241)
242. Based upon Judicial College note 132. [↑](#footnote-ref-242)
243. *See* The Crown Prosecution Service, *Supporting Victims and Witnesses with a Learning Disability* (CPS, 2009) <<http://www.cps.gov.uk/publications/docs/supporting_victims_and_witnesses_with_a_learning_disability.pdf>> (visited 03 January 2014). This guide is limited to intellectual disabilities. [↑](#footnote-ref-243)
244. Rob Mawby and Martin Gill, *Crime Victims: Needs, Services, and the Voluntary Sector* (Tavistock, 1987), at 229. [↑](#footnote-ref-244)
245. Marie Manikis “A Comparative Overview of Victims’ Rights, Enforcement Mechanisms, and Redress in England and Wales and the American Federal Jurisdiction” 2013 *Victims of Crime Research Digest* 6 <<http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/p6.html>> (visited 08 January 2014). [↑](#footnote-ref-245)
246. Central Statistics Office, *Quarterly National Household Survey: Equality Quarter 4*. (CSO, 2010). <<http://www.cso.ie/en/media/csoie/releasespublications/documents/labourmarket/2010/qnhs_equalityq42010.pdf>> (visited 10 February 2014). [↑](#footnote-ref-246)
247. According to Maria McDonald speaking at the launch of Shane Kilcommins, Claire Edwards and Tina O’Sullivan, *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime,* (ICCL, 2014). [↑](#footnote-ref-247)
248. Perhaps one reason for this is the increasing awareness around the substantial number of people in Ireland who have disabilities. For example in the 2006 National Disability Survey 18% of the Irish population have a disability. Referred to by the Disability Federation Ireland, note X. [↑](#footnote-ref-248)
249. ####  Gordon Ashton, "Equal Access to Justice", (1997) xix The Liverpool Law Review 1, at 30.

 [↑](#footnote-ref-249)
250. Kilcommins, Edwards, and Harold, note 3, at 69. [↑](#footnote-ref-250)
251. Daphne, note 168. [↑](#footnote-ref-251)
252. [↑](#footnote-ref-252)