

A Snapshot of the Development and Implementation of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

Lauren J O'Connell

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Dear Editor,

DNA profiling was first used in the Republic of Ireland in the late 80s.¹ Despite this, it would be twenty eight years before Ireland commenced the collection, storage and organisation of DNA profiles.² In 2014, the Irish government enacted the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (2014 Act), which provided for the establishment of Ireland's DNA Database System. Given this development, this letter provides an insight into the development of the 2014 Act and the DNA Database System, coupled with a brief consideration of some of the immediate challenges faced when implementing same.

In Ireland, discussion on DNA evidence and on the possibility of a DNA database occurred throughout the 90s and noughties.³ 2007 saw the Criminal Justice (Forensic Sampling and Evidence) Bill 2007 tabled, but then abandoned following the decision in *S and Marper v UK*.⁴ In *S and Marper*, the European Court of Human Rights (ECtHR) held that the policy of indefinite retention of DNA samples and profiles of unconvicted persons in England, Wales

¹ The Irish Council for Civil Liberties (ICCL), *Human Rights Compatibility of the Establishment of a DNA Database* (Position Paper, 2003) <<https://www.iccl.ie/archive/iccl-position-paper-on-the-establishment-of-a-dna-database-2003/>> accessed 21 February 2018; See also RTE Press Centre, 'Cracking Crime' (9 July 2005) <<https://presspack.rte.ie/2005/07/09/cracking-crime-7/>> accessed 21 February 2018.

² The collection, storage and organisation of other forms of forensic evidence is not a new concept in Ireland. For example, 'Sicar', a footprint databank used to detect individual shoe brands has been used, see The Irish Council for Civil Liberties (ICCL), *Human Rights Compatibility of the Establishment of a DNA Database* (Position Paper, 2003) <<https://www.iccl.ie/archive/iccl-position-paper-on-the-establishment-of-a-dna-database-2003/>> accessed 21 February 18 [13]; See also The Department of Justice and Equality, *Minister Fitzgerald Announces Launch of New DNA Database* (13 November 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000588>> accessed 21 February 2018.

³ See for example, Caroline Fennell, 'DNA Profiling: Hidden Agendas' (1991) 1(1) *Irish Criminal Law Journal* 34; The Irish Council for Civil Liberties (ICCL), *Human Rights Compatibility of the Establishment of a DNA Database* (Position Paper, 2003) <<https://www.iccl.ie/archive/iccl-position-paper-on-the-establishment-of-a-dna-database-2003/>> accessed 21 February 2018; The Law Reform Commission, *Report on the Establishment of DNA Database* (LRC 78—2005) <<http://www.lawreform.ie/publications/publications-by-year.547.html#2000s>> accessed 21 February 2018.

⁴ *S and Marper v United Kingdom* (2009) 48 EHRR 50.

and Northern Ireland violated Article 8 of the European Convention on Human Rights.⁵ Following this, the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 was drafted and debated by the Oireachtas, but later lapsed due to a change in government.⁶ Eventually, the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013 was tabled, before the 2014 Act was enacted in June 2014,⁷ with the majority of the Act commencing in late 2015.⁸

The 2014 Act is an extensive piece of legislation with several key functions⁹ including the replacement of the existing statutory and common law regimes governing the taking of DNA samples,¹⁰ and providing for an Irish DNA Database System.¹¹ There are also provisions concerning fingerprints, palm prints and photographs.¹² Finally, the 2014 Act also implements the Prüm Council Decision¹³, which concerns the international exchange of DNA and fingerprint evidence.

In relation to the DNA Database System, the 2014 Act outlines how it is to be managed and also provides mechanisms of oversight.¹⁴ It also has an extensive part dedicated to the destruction or removal of DNA samples and/or profiles from the DNA Database System.¹⁵ The

⁵ *ibid*; See also Bob Hepple, ‘Forensic Databases: Implications of the Cases of S and Marper’ (2009) 49 *Med Sci and L* 77, 87.

⁶ See Matthew Holmes, ‘Lack of DNA Database is a National Disgrace’ *The Irish Times* (Dublin, 17 September 2012) <<https://www.irishtimes.com/news/crime-and-law/lack-of-dna-database-is-a-national-disgrace-1.532180>> accessed 27 February 2018.

⁷ Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Commencement) Order 2015, SI 508/2015.

⁸ *ibid*.

⁹ For a brief overview, see Colm O’Briain, ‘Criminal Justice (Forensic Evidence and DNA Database System) Act 2014: An Overview from a Criminal Practitioner’s Perspective’ (The 15th Annual Conference of the Director of Public Prosecutions, 2014) <[https://www.dppireland.ie/filestore/documents/PAPER - Colm OBriain - 2014.10.18.pdf](https://www.dppireland.ie/filestore/documents/PAPER_-_Colm_OBriain_-_2014.10.18.pdf)> accessed 21 February 2018, 1-2; See also The Department of Justice and Equality, *Minister Fitzgerald Announces Launch of New DNA Database* (13 November 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000588>> accessed 21 February 2018.

¹⁰ Criminal Justice (Forensic Evidence and DNA Database System) Act 2014, pts 3-7.

¹¹ *ibid* pt 8.

¹² *ibid* pt 11.

¹³ *ibid* pt 12.

¹⁴ *ibid* pt 9.

¹⁵ *ibid* pt 10.

DNA Database System is operated and managed by Forensic Science Ireland (FSI), an associated office of the Department of Justice and Equality.

As the 2014 Act is still in its relative infancy, and the DNA Database System has only been in operation for two years, the full impact of the 2014 Act has yet to be felt through the criminal justice system. Arguably, the most immediate impact of the 2014 Act has been felt by two bodies in particular; An Garda Síochána and Forensic Science Ireland. Both these bodies faced the logistical task of successfully implementing and utilising the DNA Database System.

For An Garda Síochána, the legislative basis for taking DNA samples from people has changed. This has resulted in the requirement for education regarding the new legislation. Further, the DNA Database System is a new investigative tool for An Garda Síochána, meaning that specific education and training regarding same would be required. In particular, An Garda Síochána would have to familiarise themselves with the relevant sections of the 2014 Act which outline the processes for taking samples, along with the processes for entry and removal of DNA profiles to and from the DNA Database System.¹⁶ Related to this, it would also be prudent to have ongoing training for crime scene examiners, so as to ensure they are educated on the latest forensic techniques along with the challenges of dealing with sensitive material. This is especially so given that there is now the possibility for DNA profiles obtained from crime scene evidence to be entered onto the DNA Database System.

On an administrative level for An Garda Síochána, paperwork has had to be changed so as to reflect the new legislation. It is also foreseeable that as the DNA Database System continues to both integrate into the criminal justice system and expand in size due to the addition of profiles, that there would be a continual increase in related administrative work associated with same.

Similarly for Forensic Science Ireland, the introduction of the Irish DNA Database System has presented as an increased workload at a time when there are already concerns regarding resources.¹⁷ The issues surrounding the facilities for Forensic Science Ireland have been

¹⁶ See An Garda Síochána, 'DNA Code of Practice: An Garda Síochána Code of Practice as per Section 157 Criminal Justice (Forensic Evidence and DNA Database System) Act 2014' (Version 1.1, 2016) <<https://www.garda.ie/en/About-Us/Publications/Policy-Documents/>> accessed 21 February 2018.

¹⁷ See Ingvar Kopp, 'Review of Resource Needs in Forensic Science Laboratory and the Wider Scientific Context in Ireland' (Department of Justice and Equality, 2008) <<http://www.justice.ie/en/JELR/Pages/Kopp-Review>> accessed 21 February 2018; Shane Phelan, 'State Forensic Science Lab "at crisis point", warns Tánaiste' *The Irish*

previously documented.¹⁸ To address this, work has commenced on a new ‘world-class’ facility for Forensic Science Ireland, located in Backweston, Co. Kildare.¹⁹ While unfortunate that the build did not commence prior to the introduction of the DNA Database System, it is hoped that this long-awaited facility will help to alleviate some of the concerns regarding resources. The new laboratory will ‘be equipped to a very high standard’ and so should have ‘the capacity to process all cases submitted for forensic analysis.’²⁰ The site also allows for future expansion of the facility, and so facilitates the planned merger between Forensic Science Ireland and the Garda Technical Bureau.²¹ Unfortunately, at the time of writing, the build has been ‘indefinitely delayed because no one has tendered for the project’, despite seven contractors having previously been deemed suitable.²² Currently, the Minister for Justice, Charlie Flanagan, ‘does not expect the new laboratory to be ready before 2021.’²³

To conclude, it is asserted that given the relative infancy of the legislation, and indeed the DNA Database System, interest in this area in Ireland will evolve in the coming years.²⁴ As the DNA Database System continues to integrate into the criminal justice process, it has the potential to

Independent (Dublin, 7 January 2017) <<http://www.independent.ie/irish-news/state-forensic-science-lab-at-crisis-point-warns-tanaiste-35348301.html>> accessed 21 February 2018.

¹⁸ See for example Ingvar Kopp, ‘Review of Resource Needs in Forensic Science Laboratory and the Wider Scientific Context in Ireland’ (Department of Justice and Equality, 2008) <<http://www.justice.ie/en/JELR/Pages/Kopp-Review>> accessed 21 February 2018; Conor Gallagher, ‘Shortage of Funding for Staff and Facilities Creates Forensics in Crisis’ *The Irish Times* (Dublin, 6 November 2015) <<http://www.irishtimes.com/news/crime-and-law/shortage-of-funding-for-staff-and-facilities-creates-forensics-in-crisis-1.2416927>> accessed 21 February 2018; See more recently, Conor Gallagher, ‘DNA Database leads To Backlog of Drugs Cases’ *The Irish Times* (Dublin 3 July 2017) <<https://www.irishtimes.com/news/crime-and-law/dna-database-leads-to-backlog-of-drugs-cases-1.3141080>> accessed 21 February 2018; Shane Phelan ‘State Forensic Science Lab ‘at crisis point’, Warns Tánaiste,’ *The Irish Independent* (Dublin, 7 January 2017) <<http://www.independent.ie/irish-news/state-forensic-science-lab-at-crisis-point-warns-tanaiste-35348301.html>> accessed 21 February 2018.

¹⁹ Department of Justice and Equality, ‘Tánaiste Marks Commencement of New Forensic Science Laboratory in Backweston Campus’ (10 May 2017) <<http://www.justice.ie/en/JELR/Pages/SP17000149>> accessed 21 February 2018; See also Mark Hilliard and Conor Gallagher ‘New Forensics Lab set to bring DNA Analysis to International Levels’ *The Irish Times* (Dublin, 5 April 2017) <<https://www.irishtimes.com/news/crime-and-law/new-forensics-lab-set-to-bring-dna-analysis-to-international-levels-1.3037964>> 21 February 2018.

²⁰ Department of Justice and Equality, ‘Tánaiste Marks Commencement of New Forensic Science Laboratory in Backweston Campus’ (10 May 2017) <<http://www.justice.ie/en/JELR/Pages/SP17000149>> accessed 21 February 2018.

²¹ *ibid.*

²² Brian Hutton, ‘Forensic Laboratory Delayed Indefinitely over Lack of Tenders’ *The Irish Times* (Dublin, 3 April 2018) <<https://www.irishtimes.com/news/crime-and-law/forensic-laboratory-delayed-indefinitely-over-lack-of-tenders-1.3448575?mode=amp>> accessed 28 November 2018.

²³ *ibid.*

²⁴ Forensic Science Ireland, *Annual Report 2016* (2016) <www.forensicscience.ie/documents/FSI%20Annual%20Report%202016.pdf> accessed 22 February 2018, 30.

be a useful tool in the investigation of crime. However, this will only be the case if the bodies in charge of utilising same have the resources to ensure that it is properly operated and utilised, including a fit-for-purpose laboratory. Cognisant of this, the FSI's Annual Report 2016 explicitly states that it is a goal to ensure the implementation and maintenance of the best practice for quality and security.²⁵

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Lauren J O'Connell

²⁵ ibid 33.