

**THE IRISH SENTENCING INFORMATION
SYSTEM (ISIS): A PRACTICAL GUIDE TO A
PRACTICAL TOOL**

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INTRODUCTION

The Irish Sentencing Information System (ISIS) is a steering committee designed to plan for and provide information on sentencing. The Committee consists of a judge from each jurisdiction and Tom O'Malley, BL, Senior Lecturer in Law NUI, Galway. The judicial members of the committee are the Hon. Mrs Justice Susan Denham (Chairperson), the Hon. Mr Justice Kevin O'Higgins,‡ the Hon. Mr Justice Esmond Smyth, and Her Hon. Judge Miriam Malone.

In this article we will discuss the pilot project which is being undertaken by ISIS in the Circuit Court. The ISIS Steering Committee decided at the outset to collect data for the project by contracting researchers, each of whom has to date been a barrister in the early years of his or her practice with experience of criminal law and procedure, to attend Circuit Criminal Court sentencing sittings. The first two researchers, Brian Conroy BL and Patricia Hill BL, were engaged in relation to the project in the middle of 2006, and began their work by drafting a suitable template for the collection of sentencing information, under the direction of the Steering Committee and in consultation with Circuit Court judges. Once the Steering Committee was satisfied that a template covering all relevant matters had been drafted, the researchers began to attend Dublin Circuit Criminal Court sentencing hearings on a regular basis in order to gather sentencing information for the purposes of the pilot scheme. Accordingly, the great majority of the sentencing

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information currently on the pilot database is drawn from cases heard by the Dublin Circuit Criminal Court.

Having made an invaluable contribution to the initial success of the pilot scheme, Patricia Hill was replaced as a researcher on the project in April 2008 by Paul George Gunning BL, who is also responsible for gathering sentencing data from Dublin Circuit Criminal Court.

Significantly, the pilot scheme was extended outside Dublin for the first time in April 2008, when Orfhlaith McCarthy BL was appointed as a researcher for the Cork Circuit. In consequence, data in relation to a number of cases processed by the Cork Circuit Criminal Court has now been posted on the pilot database.

I. THE NATURE OF THE ISIS

Sentencing information systems have previously been established in other jurisdictions, such as New South Wales and Scotland. While the members of the Steering Committee have had regard to the existing systems in those jurisdictions in considering the manner in which the ISIS might operate, the Committee has steered its own course as regards the nature of the pilot database to be created here. The pilot system now in place here does not simply imitate one of the various sentencing schemes created abroad, but rather aims to take what are considered to be the best aspects of each, and combine these with modifications to suit the Irish legal landscape. The result is a sentencing tool which is intended to be entirely descriptive in nature. Salient details of a broad range of sentences handed down in respect of offences dealt with before the Circuit Criminal Court are posted on a searchable database that would be available as a reference tool. It is intended that the extent to which, and the way in which, a judge uses the database will be a matter entirely within his or her own discretion.

II. COLLATING DATA

The Steering Committee decided from the outset that researchers would deal only with matters in relation to which they

were privy to all of the evidence put before the sentencing judge. Accordingly, data has not been collected regarding, for example, sentencing matters which were adjourned for probation reports to a sitting of the Court for which a researcher was not present, or where a researcher was not present on the first date on which evidence was heard. In these circumstances, there is a possibility that certain important details pressed at the hearing in such cases would not be recorded. In addition to their attendance at the sentencing hearings, the relevant case files in the Circuit Court Office are available to the researchers in cases where this has been necessary to fill any gaps in the information available from the oral evidence tendered before the Court. To date, this option has been used sparingly by the researchers, on the basis that it is the matters actually tendered before the Court that are relevant to the sentence handed down, but recourse to the file has been useful in cases where, for example, certain evidence tendered is not clearly audible in Court.

It is hoped that the approach outlined above will ensure the accuracy of the data gathered. Significant efforts have been made to ensure that the data is representative of sentencing practice in general, on the Dublin Circuit (and more recently, the Cork Circuit), by collecting information from as broad a selection of judges as possible, thus avoiding a situation where the final database simply reflects one judge's approach to sentencing. Furthermore, it is intended to collect information relating to as broad a range of offences as possible, although success in achieving this objective is obviously dependent to a large extent on the kinds of offences that are coming before the Court at any point in time.

To date, information in relation to somewhere in the region of 300 concluded sentencing matters has been posted on the pilot database, and the researchers also have data relating to a number of other part-heard matters that are due to conclude in the near future. These include sentences handed down by each of the judges who have been dealing regularly with sentencing hearings in the Dublin Circuit Criminal Court and the Cork Circuit Criminal Court in recent times, and relate to a relatively wide range of offences.

III. THE DATA COLLECTED

As one would expect, many of the matters included on the pilot database relate to the “common or garden” offences that sentencing Circuit Court judges are used to dealing with on a day-to-day basis: robbery, burglary, unauthorised taking of a motor vehicle contrary to the Road Traffic Act, 1961, s. 112, possession of controlled drugs for sale or supply contrary to the Misuse of Drugs Act, 1977, ss. 15A and/or 15, assault causing harm and/or serious harm, and criminal damage. There is a smaller number of sentencing matters recorded involving offences that, whilst somewhat less common, are certainly within the ordinary experience of most Circuit Court judges who deal regularly with criminal matters: possession of child pornography, dangerous driving causing death, indecent assault, making threats to kill, possession of ammunition and/or firearms, reckless endangerment and violent disorder. Finally, certain of the sentencing matters recorded involve *sui generis* offences that come before the Circuit Court relatively rarely, including the following: using a false instrument contrary to the Criminal Justice (Theft and Fraud Offences), Act 2001, s. 26, child neglect, making a counterfeit social welfare travel pass, illegal importation of tobacco products contrary to the Customs Consolidation Act, 1876, corruptly receiving funds, failing to file tax returns, breaches of the environmental protection legislation, breaches of the Companies Acts, and keeping a brothel.

Certain complications in terms of the presentation of sentencing information arise when dealing with cases where the same accused is being sentenced on numerous bills of indictment, or where different accuseds are sentenced on the same indictment. For the sake of clarity, it was decided that separate matters should be dealt with in separate entries on the database. Accordingly, where two accuseds are being sentenced on the same bill of indictment, two separate entries are made on the database. Similarly, where an accused is being sentenced under multiple bills of indictment, separate entries are made in respect of each bill, but not in respect of each count on the bill. However, to ensure that a judge reading the data is made aware of the full picture considered by the sentencing judge, the fact that the

accused was sentenced on another bill of indictment on the same date, or that another accused was sentenced on the same bill, is noted on the database entry, and an electronic link to the relevant entry or entries is provided.

The manner in which the sentencing information is collected and stored is required to comply with Data Protection legislation. Accordingly, neither the name of the accused nor the number of the indictment on which he or she is sentenced is stored in the database. This would not appear to have any appreciable effect on the quality of the information made available, as all matters relevant to the sentencing decision are recorded. In order to distinguish between the various database entries, and for ease of reference, each database entry is given an identifying number.

There has been prolonged consultation with both the members of the Steering Committee and Circuit Court judges in relation to the matters to be contained in each database entry. The task here is to arrive at the happy medium between leaving out salient information so that the entry is misleading, and including so much information that the entry cannot be easily scanned by a judge seeking a reference point. It is to be hoped that the template agreed upon achieves this balance, by including all of the information that a sentencing judge requires, without becoming indigestible.

IV. SAMPLE TEMPLATES

At this juncture, rather than going through the categories set out in an entry in an abstract fashion, it may be useful to present two sample templates, setting out information gathered by the researchers in relation to two concluded sentencing matters, one from 2007 and one from 2008. It should be noted that it is not possible to replicate a database entry on the printed page; the examples set out below simply reproduce the information collected by the researchers rather than its format on the database. When set out on screen and with the benefit of electronic links which permit the reader to switch with ease between different headings, the entries are somewhat less difficult to navigate.

EXAMPLE 1**Case Information Section**

Case Number(s):

Report Number: BC126.

Linked Cases: None.

Keywords: Assault Causing Serious Harm – Paralysed – Knife – Fight.

Court: 8.

Details of Offence Section

Offence(s) Charged:

Count 1: Assault Causing Serious Harm Contrary to Section 4 Non-Fatal Offences Against Person Act 1997.

Offence(s) taken into consideration: None.

Ancillary/consequential orders made: None.

Date of offence: 26/12/2006.

Location of offence: House in Dublin 13.

Brief description of offence(s): The offender was at a house party when the victim, whom he knew vaguely, and himself began to argue. A lot of drink had been taken by all present. Both parties went outside and some punches were thrown by both parties. Then the offender stabbed the victim twice in the

back and shoulder with a knife that he was carrying, leading to permanent paralysis.

Sentencing comments: Victim did not know that the offender had a knife – this was an aggravating factor. The Court took into account the offender's early plea and young age as mitigating factors.

Offender Details Section

Gender: Male.

Date of Birth: Not available on Court file.

Age at date of offence: 20.

Age at date of sentence: 21.

Drug status: Drank a lot of alcohol and took cocaine, but not an addict.

Nationality: Irish.

Previous convictions: Yes, 44 in total, all dealt with in District Court, mainly road traffic and public order offences. Most recent convictions were for District Court public order offences, sentenced on 5/2/2007, fine imposed.

Previous custodial sentence(s): Yes, the longest sentence was 10 months' imprisonment for a road traffic offence sentenced in November 2006.

Other personal information: Accused was very badly injured in the incident himself, though mainly from a struggle afterwards when the victim had already been stabbed. Good work history, and had always been in employment since left school at age 16. No history of offending until aged 18.

Whether on bail at date of offence: No.

Offender's role in offence: Sole offender.

Degree of co-operation with investigation: Co-operative and pleaded guilty early.

Co-Accused - Sentence imposed on co-accused:

Co-Accused - Date of Sentence:

Victim details

Number of victims: 1

Victim Number: 1.

Nationality: Irish.

Age of victim: 21.

Gender of victim: Male.

Victim impact: Permanently paralysed below the chest. Spinal cord injury and bowel dysfunction, no control of bladder or use of legs. Cannot work, has bouts of depression, has withdrawn from normal life. His mother is very upset. His girlfriend allows him to live in her sitting-room, but the facilities there are very limited and his family does not have sufficient funds to care for him properly.

Appeal Section

Type of appeal:

Date of appeal decision:

Appeal Decision:

Variation on appeal:

Appeal Court comments:

Weapon/ Drugs Section

Weapon Used in Committing Offence: Yes.

Type of Weapon: Knife.

Value of any drugs involved:

Value/Nature of any property stolen/handled etc:

Comments Section

Researcher's Comments:

Sentence Section

Offence Sentenced: Count 1, Assault Causing Serious Harm.

Maximum Sentence: Life Imprisonment.

Date of Plea: 25/06/2007.

Plea: Guilty.

Date of Sentence: 11/10/2007.

Sentence category: Imprisonment.

Consecutive sentence: No.

Sentence details: 6 years' imprisonment, last 12 months suspended for 2 years on usual conditions to include keeping the peace and being of good behaviour.

EXAMPLE 2

Case Information Section

Case Number(s):

Report Number: BC174.

Linked Cases:

Keywords: Buggery – Indecent Assault – Delay – Age – Suspended.

Court: 25.

Details of Offence Section*Offence(s) Charged:*

Count 1: Buggery contrary to s. 61 Offences Against Person Act 1861.

Count 2: Buggery contrary to s. 61 Offences Against Person Act 1861.

Count 3: Indecent Assault contrary to s. 62 Offences Against Person Act 1861.

Count 4: Buggery contrary to s. 61 Offences Against Person Act 1861.

Count 5: Indecent Assault contrary to s. 62 Offences Against Person Act 1861.

Count 6: Indecent Assault contrary to s. 62 Offences Against Person Act 1861.

Offence(s) taken into consideration: None.

Ancillary/consequential orders made: Offender placed on Sex Offenders Register.

Date of offences: Various dates between 1st June 1979 and 31st May 1980

Location of offence: Various outdoor locations in Dun Laoghaire, Foxrock, Leopardstown. Offences took place in parked van.

Brief description of offence(s): The accused worked as a milkman and hired the victim who was 13 at the time as a helper for the summers. Masturbated him for a few minutes in

first incident, subsequently performed oral sex on him and buggered him 25 or 30 times, also showed him pornographic magazines. The offences charged are a sample of the incidents which occurred. The accused gave the victim money afterwards on certain occasions.

Sentencing comments: The massive impact on victim had to be taken account of. Passage of time, good character, guilty plea and age pointed in favour of suspending a portion of sentence.

Offender Details Section

Gender: Male.

Date of Birth: Not available from Court file.

Age at date of offence: 38.

Age at date of sentence: 66.

Drug status: None.

Nationality: Irish.

Previous convictions: No previous convictions.

Previous custodial sentence(s):

Other personal information: Had been sexually abused himself when aged 13, father had died young and had issues stemming from this. His own daughter died in 1980 having been sick for some time. It was thus argued on the basis of reports that the conduct was stress-induced. Had undertaken 366 hours of treatment with Granada Institute and took the treatment extremely seriously, was seen as exceptionally remorseful and co-operative. Wife and family supportive.

Whether on bail at date of offence: No.

Offender's role in offence: Sole offender.

Degree of co-operation with investigation: Co-operative, pleaded guilty.

Co-Accused - Sentence imposed on co-accused:

Co-Accused - Date of Sentence:

Victim details

Number of victims: 1.

Nationality: Irish.

Age of victim: 13/14 at time.

Gender of victim: Male.

Victim impact: Very traumatised, sense of anger, injustice, loss. Feels life would have been a lot better if not sexually abused.

Appeal Section

Type of appeal:

Date of appeal decision:

Appeal Decision:

Variation on appeal:

Appeal Court comments:

Weapon/ Drugs Section

Weapon Used in Committing Offence:

Type of Weapon:

Value of any drugs involved:

Value/Nature of any property stolen/handled etc:

Comments Section

Researcher's Comments:

Sentence Section

Offences Sentenced:

Count 1: Buggery contrary to s. 61 Offences Against Person Act 1861.

Count 2: Buggery contrary to s. 61 Offences Against Person Act 1861.

Count 3: Indecent Assault contrary to s. 62 Offences Against Person Act 1861.

Count 4: Buggery contrary to s. 61 Offences Against Person Act 1861.

Count 5: Indecent Assault contrary to s. 62 Offences Against Person Act 1861.

Count 6: Indecent Assault contrary to s. 62 Offences Against Person Act 1861.

Maximum Sentence: 10 years' imprisonment on sexual abuse charge; life imprisonment on buggery charge.

Date of Plea:

Plea: Guilty.

Date of Sentence: 19/06/2008.

Sentence category: Imprisonment.

Consecutive sentence:

Sentence details:

C1: 4 years' imprisonment.

C2: 4 years' imprisonment.

C4: 1 year's imprisonment.

C6: 2 years' imprisonment.

C7: 1 year's imprisonment.

C8: 1 year's imprisonment.

All concurrent, last 3 years of total suspended for 5 years on terms to include continuing treatment with Granada Institute.

It will be seen that information in relation to each entry is stored under a number of different headings. This assists the operation of the database, as judges seeking to refer to the database will be able to search for given material under each heading. For example, a judge looking for information in relation to offences where a knife was used can enter "knife" under the "Weapons" or the "Keywords" heading, or a judge seeking information in relation to offences where a community service

order was imposed can enter “community service” under the “Sentence Category” heading, and so on.

V. DIFFICULTIES IN COLLATING SENTENCING DATA

There are two principal difficulties with the collection of sentencing data. First, there are potentially six courts in the Dublin Circuit (Courts 8, 15, 23, 24, 25 and 29) that can hear sentences on any given day, though in practice sentences are usually dealt with in only three or four of these courts. When the sentence list is initially called over in Court 8, a number of sentences will typically be sent to other courts, whereupon the researcher can go to that court or remain in Court 8. In any event, this leads to quite a number of sentences that are dealt with in the Dublin Circuit not being recorded. The position in Cork is different, because it is more likely that data can be collected in relation to most if not all of the sentences handed down, given the smaller number of criminal matters coming before the Circuit Court.

Secondly, most sentences are not dealt with on the first day in the sentence list. This is especially so where drugs offences are involved. Typically, such matters will be adjourned on one or more occasions for the preparation of a Probation Service Report or for a medical report, or possibly for another reason. This makes it difficult for the researchers to gather all matters relating to an individual sentence. The researchers co-operate to attempt to compensate for this difficulty, but it is inevitable that a number of sentences handed down will fall through the cracks.

The above-mentioned difficulties do not interfere to any great extent with the functioning of the pilot project. So long as judges are aware that not every sentence handed down will be recorded, it does appear that a workable and practically useful database can be established notwithstanding these difficulties.

CONCLUSION

In conclusion, it may be worthwhile to briefly consider how the ISIS database in its ultimate form might be used by judges in practice. It would appear likely that the database will serve different purposes in different contexts. A judge sentencing for an offence that comes before the Circuit Court relatively rarely might find the database of great assistance in forming a preliminary view on the kind of sentence that might be appropriate for the offence, where in the past no such assistance might have been available. In relation to more common offences, where it is likely that a judge would have a clear view on the starting-point from which to decide on a sentence, because he or she sentences for such offences on a daily or weekly basis, the database might be used to help the sentencing judge identify prior sentencing decisions which share one or more striking features with the case at issue. So, for example, a judge sentencing for an offence that is of great antiquity might have recourse to the database for assistance on how to deal with this unusual aspect of the case, or a judge who is sentencing an offender with severe psychiatric problems might find the database of utility in structuring the sentence so as to address this matter, and so forth. The database might also be used by a judge in a slightly more scientific or systematic manner, to gather comprehensive information on the various sentences that have been imposed in the past in respect of a particular offence, with the objective of locating future offences somewhere on the spectrum of sentences previously imposed.

Of course, it goes without saying that in relation to all of the above suggestions, the database is intended to facilitate by providing information. Therefore, a judge may put the database to an entirely different use than those suggested above, or may choose not to refer to the database very much at all. The value of the database is that it provides information in an area where very little data was previously available. It is to be hoped that this information will prove helpful in practice, and that in the future it will be a valuable tool.