

# PERJURY IS PROSECUTABLE IN IRELAND

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## **Note added on 3 October 2020 by Andries:**

This paper was drafted in 2016. The **Perjury and Related Offences Bill 2018**, (Bill 112 of 2018) progressed to the “Dáil Third Stage” on 28 July 2020 in Dáil Éireann. If the bill is enacted, it will replace the existing perjury enactments.

## **Introduction**

In the course of private and public family law proceedings, perjury has the potential to destroy entire families and communities. If unchecked, through lack of criminal prosecution where it transpires that an untruth was knowingly told during sworn testimony, the fundamental building blocks of Irish society lie fatally exposed.

Decisions made in the Irish Courts are decoded – almost exclusively – on oral evidence. In the context of private family law and child care proceedings, an untruth spun on a crucial issue can sway the Court in favour of the liar’s position. APS have been directly involved in several cases where lies have set events in motion which ended in the death, usually by suicide, of one or more persons. Such deaths are, to a degree, investigated but the perjury and other offences giving rise to the suicides or murders, are never investigated or prosecuted. The net result of this is that the “word on the street” is that one can lie to a Judge, obtain a decision in their favour and face zero consequences.

Why is this happening? What can we, as an organisation and a community passionate about justice being based on truth, do?

## **Gap in legal education**

Despite having its own section in three of Ireland’s leading textbooks on criminal law, the criminal offence of perjury is not generally known among members of An Garda Síochána, legal practitioners and Judges.<sup>1</sup> Furthermore, the Law Reform Committee’s 1990 Report on Oaths and Affirmations states “although prosecutions for perjury are comparatively rare, this does not appear to be due to any deficiencies in the existing law.”

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<sup>1</sup> Hughes & Hughes, *Criminal Procedure in the District Court* (1<sup>st</sup> edn, Clarus Press, 2014) page 797, Quinn, *Criminal Law in Ireland* (4<sup>th</sup> edn, Irish Law Publishing, 2009) and Woods, *District Court Practice and Procedure in Criminal Cases* (2<sup>nd</sup> edn, Limerick, 2010).

## The law on perjury

Although the Perjury Act of 1586 is still in place, perjury is referred to in many enactments as a common law offence<sup>2</sup> which may be tried summarily.<sup>3</sup> The most recent statutory enactment which refers to the existence of perjury is the Companies Act 2014.

The ingredients of the offence are:

1. An oath was sworn. This requires proof of:
  - a. The authority, usually of the Court Registrar, to administer the oath.
  - b. The administration of the oath (i.e. the accused person formally entered the oath).
  - c. The form of the oath administered.
2. The materiality of the matter sworn (i.e. the fact asserted was not trivial).
3. The falsity of the matter sworn.
4. A knowing intention on the part of the accused person regarding said falsity.

It is clear that the 1586 Act is still in place insofar as it was not repealed by the 1962 Act. Were it not for the amendments set out in the 1962 Act there would be some doubt as to whether the statutory offence still existed, as it could have been repealed by any of the criminal law legislation in the intervening period. The 1586 Act, and indeed the 1729 Act, appear to make perjury a felony. There are two elements to the 1586 Act,-

- firstly the procurement of wilful or corrupt perjury, in section 1 (first part) of the Act, and
- in section 2 (the second part) of the Act their own perjury "or by their owne act.. commit any manner of willfull perjurie".

The penalties were different under the different sections, but is amended by the act of 1729.

It is important to note the entitlement under this Act to damages for perjury "And that upon every such reversall, the parties grieved to recover his or their damages against all and every such person or persons, as did procure the said judgment, so reversed, to be given against them, and every of them, by action or actions, to be sued upon his or their case or cases, according to the course of the common lawes of this realm".

The level of confusion about the existence of a statutory offence, in that the 1791 Act makes reference to "the common law offence of perjury" may theoretically create the possibility that at some stage prior to 1791 the offence of perjury had already been repealed. This confusion can be seen as eliminated by the amendments to the 1586 Act, made in 1962.

It may be, that in fact there are probably two separate jurisdictions here, one the statutory offence being breach of the Perjury Act 1586 as amended /1729 Act which are felonies, and the other the

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2 Note: In many instances where reference is made to an Act, the Act is mentioned. In several cases, mention is made to perjury without quoting the enactment. One example is Section 7 of the Criminal Procedure Act 2010

3 Per First Schedule of the Criminal Justice Act 1951 and section 2(2) of the same Act. This means that perjury, although an indictable offence, can be tried in the District Court.

common law misdemeanour of perjury prosecutable in accordance with the 1791 Act.

## Applicable penalty

In the District Court, a person convicted of perjury, or procuring perjury, faces 1 year in prison and a fine of up to €5,000. On indictment in the Circuit Court, a convicted person may face 7 years imprisonment and an unlimited fine.

According to the Perjury enactment (as copied after the conclusion) some unique additional penalties exist and is not amended during the amendments made to the Principle Act in 1962<sup>4</sup>



- One hour in pillory and “disabled to be sworn” (branding as a liar) if found guilty of procuring perjury
- “Disabled to be sworn” (branding as a liar) if found guilty of perjury
- Judgement reversal (not to be labelled a liar any more) – procurer of perjury - Repair

damages suffered by other party

- Judgement reversal (not to be labelled a liar any more) – perjurer - Repair damages suffered by effected party or time in pillory and nailing of the ears.



## Initiating proceedings

If you are directly aware of perjury being committed, you must first make a formal complaint to a member of An Garda Síochána. It is their duty to investigate and, if appropriate, prosecute same.

However, the current DPP’s practice of not prosecuting perjury matters (perhaps because of the in camera rule or otherwise), means that it may be necessary to initiate private criminal proceedings as a common informer. This should be done on foot of legal advice and with legal assistance.

In matters where the in camera rule is applicable, the investigating officer of An Garda Síochána may need to apply to the Court for the lifting of the in camera rule to investigate the offence. The investigating officer may also apply for a copy of the original affidavit and / or a transcript of the DAR (digital audio recording).

## The first lie

It is important that the first instance of perjury by a person be prosecuted. If found guilty, said accused is labelled, according to the Act of 1586 as a liar and all subsequent evidence by said person is to be rejected “until such time as the judgement given against the said person or persons shall be reversed by attain or otherwise”. This can only be achieved after serving the sentence.

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4 Statute Law Revision (Pre-Union Irish Statutes) Act, 1962

## Conclusion

Perjury and Procuring Perjury are offences and should be prosecuted by the relevant authority.

Offences are to be investigated by a “competent authority”. In Ireland, An Garda Síochána is the only competent authority, except in matters where another person / authority is named in the enactment.

If prosecuted as a summary offence, prosecution may be initiated by a common informer or the DPP in a District Court.

If prosecuted as an indictable offence, prosecution may only be initiated by the DPP after receiving a file outlining the investigation of the Gardaí.

Although it is not classed as perjury, a false statement tending to show that an offence has been committed, is an offence<sup>5</sup>.

## Enactments

No official record is known by the authors of any enactments prior to 1540.

**Official recorded Legislation** (See links in footnotes)

Year	Act	Notes	Status
1540	Maintenance and Embracery Act	this act was applied in Ireland at will of the courts until 1586	Repealed
1586	(28 Eliz.) c. 1 Perjury - Perjury Act <sup>6</sup>	This act is amended	In force
1729	(3 Geo. 2) c. 4 Forgery: perjury: transportation <sup>7</sup> Perjury Act		In force
1791	(31 Geo. 3) c. 18 Perjury triable at quarter sessions - Perjury Act <sup>8</sup>		In force
1962	Statute Law Revision (Pre-Union Irish Statutes) Act <sup>9</sup>	1586 Act retained and Amended	In force
1975	Court of Justice of the European Communities (Perjury) Act <sup>10</sup>	Extending law to the European Court	In force
2007	Statute Law Revision Act -Number 28 of 2007 <sup>11</sup>	Perjury Acts of 1586, 1729, 1791 retained	In force

NB: The PERJURY ACTS are not “local and personal Act ” or a “private Act” as repealed by the Statute Law Revision Act 2009 <sup>12</sup> (Note S.1 “Definitions”)

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5 Criminal Law Act 1976 S.12

6 <http://www.irishstatutebook.ie/eli/1586/act/1/enacted/en/print.html>

7 <http://www.irishstatutebook.ie/eli/1729/act/4/enacted/en/print.html>

8 <http://www.irishstatutebook.ie/eli/1791/act/18/enacted/en/print.html>

9 <http://www.irishstatutebook.ie/eli/1962/act/29/enacted/en/print.html>

10 <http://www.irishstatutebook.ie/eli/1975/act/12/enacted/en/print.html>

11 <http://www.irishstatutebook.ie/eli/2007/act/28/enacted/en/print.html>

12 <http://www.irishstatutebook.ie/eli/2009/act/46/section/1/enacted/en/index.html>

The acts hereunder were copied from the Irish Statute Book web page.

## PERJURY ACT 1586

as amended by the Statute Law Revision (Pre-Union Irish Statutes) Act, 1962.  
Amendments done using single strike outs in the text.

### CHAPTER I.

An Act concerning Willfull Perjurie.

5 Eliz. 9. Eng. 3 G. 2. 4. [Ir.].

Persons procuring witnesses to commit perjury in any suit by writ, action, bill, complaint, or information, in any court, or who suborne witnesses to testify in perpetuam rei memoriam.

After conviction forfeit 40l.

Or, if they have not to that value, imprisonment for six months, and pillory for one hour.

And not to be received as witnesses in any courts till judgment reversed.

Upon reversal, to recover damages against the persons procuring said judgment by action on the case.

FORASMUCH as this realm of Ireland is greatly troubled and hindered by reason of wilfull perjurie daily committed notwithstanding that many good lawes have been made and ordeyned for redress thereof, and for that great dangers and perilles are daily like to fall, if some further remedies shall not be speedily provided for prevention thereof; be it therefore enacted by our Sovereign Lady the Queen, with the assent of the lords spiritual and temporal, and the commons in this present Parliament assembled, and by the authority of the same, that all and every person and persons, which ~~at any time after the end of this present Parliament,~~ shall unlawfully or corruptly procure any witness or witnesses by letters, rewardes, promisses, or by any other sinister or unlawful labour or meanes whatsoever, to commit any wilful or corrupt perjurie, in any matter or cause whatsoever now depending, or that hereafter shall depend in suite and variaunce, by any writ, action, bill, complaint or information, in any wise concerning any lands, tenements, or hereditaments, or any goods, chattles, debts, damages, or any other cause of action whatsoever, in any ~~of her Majesties courtes of castle chamber, chauncerie, chief place courte of common plees, exchequer, or any other court or courts,~~ before any judge, ~~justicer, president, governour,~~ commissioners, ~~mayor, sheriffes, senescalles,~~ or any other officers whatsoever, ~~as well within liberties as without, in this realm of Ireland,~~ or shall likewise, unlawfully or corruptly, procure or soborne any witness or witnesses, which shall ~~from and after the end of this present Parliament,~~ be sworn to testifie in perpetuam rei memoriam: that then everie such offender and offenders shall, for his or their said offence, being thereof lawfully convicted or attainted, lose and forfeite the summe of fortie poundes: and if it fortune any such offendour or offendours, so being convicted or attainted, as aforesaid, not to have any goods or chattels, lands or tenements, to the value of fortie pounds; that then everie such person, so being convicted or attainted of any offences aforesaid, shall, for his or their said offence, suffer imprisonment by the space of one half year without bayle or mayneprise, and to stand upon the pillory by the space of one whole hour, in some market towne next adjoyning to the place where the offence was committed, in open market there, or in the market towne it selfe where the offence was committed: [Rep., Stat. Law Rev. (1.) Act, 1878] And that no person or persons being so convicted or attainted, to be from thenceforth received as a wisse, to be deposed or sworn in any court of record, or within any other court or courts ~~within this realm of Ireland,~~ untill such time as the judgment given against such person or persons shall be reversed by attaint or otherwise. And that upon every such reversall, the parties grieved, to recover his or their damages against all and every such person and persons, as did procure the sayd judgment, so reversed, to be first given against them or any of them, by action or actions, to be sued upon his or their

case or cases, according to the course of the common lawes of this realm.

The persons committing perjury, and convicted, forfeit 20*l.* and imprisoned 6 months:

their oath not to be received in any court of record till judgment reversed.

Upon reversal, damages against the person procuring the judgment by action on the case.

If offender has not 20*l.* to be set in pillory by the sheriff or head officer,

to have his ears nailed,

disabled to be sworn till judgment reversed,

thereupon to recover damages as before.

Who shall hear and determine said offences.

Nor to restrain the authority of any judge having absolute power to punish perjury before this Stat. so that a less punishment than in this act contained is not set upon the offenders.

Perpetual.

II. And be it further enacted by the authoritie aforesaid, that if any person or persons, ~~after the end of this Parliament,~~ either by the subornation, unlawfull procurement, sinister perswasion or means of any others, or by their owne act, consent or agreement, willfully or corruptly commit any manner of willfull perjurie, by his or their deposition in any the courts before mentioned, or before any the judges, commisioners, or officers before mentioned, or being examined ad perpetuam rei memoriam: that then every person and persons so offending, and being thereof duely convicted or attainted, by the laws of this realm, shall for his or their offence loose and forfeit twenty pounds, and to have imprisonment by the space of six months, ~~without baile or mainprise,~~ and the oath of such person or persons so offending, from thenceforth, not to be received in any court of record within this realm, untill such time as the judgment given against the said person or persons shall be reversed by attaint or otherwise. And that upon every such reversall, the parties grieved to recover his or their damages against all and every such person or persons, as did procure the said judgment, so reversed, to be given against them, and every of them, by action or actions, to be sued upon his or their case or cases, according to the course of the common lawes of this realm. And if it happen the said offender or offendours, so offending, not to have any goods or chattels to the value of xx. li. that then he or they to be set upon the pillorie in some market place within the county, city or borough, where the said offences shall be committed, by the sheriffe or his minister, if it shall fortune to be without any citie or towne corporate; and if it happen to be within any such citie or towne corporate, then by the said head officer or officers of such citie or towne corporate, or by his or their ministers, and there to have both his ears nailed, [Rep., Stat. Law Rev. (I.) Act, 1878,] and from thenceforth to be discredited and dishabled for ever to be sworn in any of the courts of record aforesaid, until such time as the judgment shall be reversed, and thereupon to recover his damages in maner and forme aforesaid . . [Rep., Stat. Law Rev. (I.) Act, 1879.]

III. And be it also enacted by the authority aforesaid, that aswell the judge and judges of every such of the said courts where any such suite is or shall be, and whereupon any such perjurie is or shall happen to be committed, as also ~~the justices of assise and gaole deliverie,~~ in their several circuites, and the justice of peace in every county within this realm, at their quarter sessions, ~~both within liberties and without,~~ shall have full power and authoritie, by vertue hereof, to inquire of all and every the defaults and offences perpetrated, committed or done, contrarie to this act, by inquisition, presentment, bill, or information before them exhibited, or otherwise lawfully to heare and determine the same; and thereupon to give judgment, award processe and execution of the same, according to the course of the lawes ~~of this realm.~~

VI. Provided alwayes that this act, or any thing therein containd, shall not extend in any wise to restraine the power and authoritie given by act of Parliament, heretofore made to the lord chauncellor of Ireland, and others of the King's counsell for the time being, to examine and punish ryots, routes, heynous perjuries, and other offences and misdemeanors which the lord chauncellor, and other sithence the making of the said act, have most commonly used to heare and determine in the court, at the castle of Dublin, commonly called the court of castle chamber, nor to restraine the power or authoritie of the lord president and counsaile, that is or shall be in Mounster, Conaght and Ulster, nor [Rep., Stat. Law Rev. (I.) Act, 1879] of any other judge having absolute power to punish perjurie before the making of this statute, but that they, and every of them, shall and may proceed in the punishment of all offences heretofore punishable, in such wise as they might have, and used to do before the making of this act to all purposes, so they set not upon the offender or offenders less punishment then is containd in this act: This act to continue for ever.

## PERJURY ACT 1729

### [CHAPTER IV.]

An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money, and for the more effectual transporting felons, vagabonds, and others.

For perjury or subornation, besides former punishment, to be sent to house of correction, or transported, 7 years,

escaping, breaking prison, or returning, death without benefit of clergy or the statute, tried where escape, or where apprehended.

[II.] And the more effectually to deter persons from committing wilful and corrupt perjury, or subornation of perjury; be it further enacted by the authority aforesaid, That besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury according to the laws now in being, to order such person to be sent to some house of correction within the same county for a time not exceeding seven years, there to be kept to hard labour during all the said time or to be transported to some of his Majesty's plantations beyond the seas for a term not exceeding seven years, as the court shall think most proper, and thereupon judgment shall be given, that the person convicted shall be committed or transported accordingly over and besides such punishment, as shall be adjudged to be inflicted on such person agreeable to the laws now in being; and if transportation be directed, the same shall be executed in such manner, as is or shall be provided by law for the transportation of felons; and if any person so committed or transported shall voluntarily escape, or break prison, or return from transportation before the expiration of the time, for which he shall be ordered to be transported as aforesaid, such person being thereof lawfully convicted shall suffer death as a felon without benefit of clergy or of the statute, and shall be tried for such felony in the county, where he so escaped or where he shall be apprehended.

## PERJURY ACT 1791

### CHAPTER XVIII.

An Act to render Prosecutions for Perjury, and Subornation of Perjury, more easy and effectual, and for affirming the Jurisdiction of the Quarter Sessions in Cases of Perjury.

Justices of peace at quarter sessions may determine in cases of perjury.

III. And whereas doubts have been entertained whether justices of the peace have jurisdiction in cases of perjury at common law, be it declared and enacted by the authority aforesaid, That it shall and may be lawful to and for the justices of the peace at their quarter sessions to hear and determine in all cases of perjury committed within their jurisdiction.

## Endnote

Some Anonymous legal professionals also contributed.

Final version, incorporating comments, edits and additions completed without final approval of all those who supplied input.

The following individual members assisted or motivated the original author to create this document, by their experience, comments or words: Natalie v T, Richard H, Frank N, Martin M, Joe B, Colleen J. Many others that can not be mentioned.

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