

THE DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION  
ACT, 2000

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#### SCHEDULE

**Fifth Session Fifth Parliament Republic of Trinidad  
and Tobago**

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REPUBLIC OF TRINIDAD AND TOBAGO

**Act No. 27 of 2000**

[L.S.]

AN ACT to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters.

*[Assented to 14th July, 2000]*

WHEREAS it is enacted *inter alia* by subsection (1) of <sup>Preamble</sup> section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the vote of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Enactment      ENACTED by the Parliament of Trinidad and Tobago as follows:

## PART I

### PRELIMINARY

Short title and commencement

**1.** (1) This Act may be cited as the Deoxyribonucleic Acid (DNA) Identification Act, 2000.

(2) This Act shall come into force on a date to be fixed by the President by Proclamation.

Act inconsistent with sections 4 and 5 of the Constitution

**2.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Application

**3.** This Act applies to the investigation and prosecution of offences committed before, on or after the coming into operation of this Act.

Interpretation

**4.** (1) In this Act—

“bodily substance” includes a tissue sample or any other substance containing genetic material, including a swab taken from any part of a person’s body, which when subjected to DNA forensic analysis may give DNA data;

“Central Authority” means the person or authority designated as the Central Authority for Trinidad and Tobago in pursuance of section 3 of the Mutual Assistance in Criminal Matters Act, 1997; Act No. 39 of 1997

“child” means a person under the age of eighteen years;

“court” means a court of competent jurisdiction;

“Director” means the Director of the Forensic Science Centre;

“DNA” means deoxyribonucleic acid;

“DNA forensic analysis” means the analysis of the bodily substance or the tissue sample given under this Act and the comparison of the results of that analysis with the results of the analysis of the bodily substance referred to in section 6(1), and includes any incidental tests associated with any of those analyses;

“incapable person” means a person in whom there is a condition of arrested or incomplete development of mind or body whether such condition arises from inherent causes or is induced by disease or injury and who—

- (a) requires care, supervision, treatment and control, or any of them, for his own protection or welfare or for the protection or welfare of others;
- (b) is incapable of understanding the general nature and effect of a DNA forensic analysis; or
- (c) is incapable of indicating whether he consents or does not consent to give a bodily substance;

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“Minister” means the Minister assigned with the responsibility for national security;

“offence” means all indictable offences and all summary offences punishable by a term of imprisonment exceeding one year, but does not include a summary offence punishable only by a fine or by a term of imprisonment in default of a fine;

“qualified person” means a registered medical practitioner, or a person registered under Part II or III of the Nurses and Midwives Registration Act acting under the supervision of a registered medical practitioner;

“tester” means the Director, Deputy Director, or a Scientific Officer attached to the Forensic Science Centre or a suitably qualified person from any laboratory approved by the Minister;

“tissue sample” means a sample of blood, saliva or hair taken from a person, and includes a swab taken from any part of that person’s body.

(2) A sample taken from a person includes a sample taken from that person that consists of bodily substance from another person’s body.

## PART II

### OBTAINING A TISSUE SAMPLE AND BODILY SUBSTANCE BY CONSENT

Request for a bodily  
substance

**5. (1)** Where a police officer has reasonable grounds for believing that an offence has been committed he may request a bodily substance from the victim of the offence or any other person associated with the commission of the offence.

(2) Where the victim of an offence or any other person associated with the commission of the offence, except a person detained, arrested or charged for the offence, is a child or an incapable person, the police officer may request the parent or guardian of that child or that incapable person to consent for a bodily substance to be taken from that child or that incapable person.

(3) Sections 6(3), (4) and (5), 8, 9, 10, 11, 12, 15, 16 and 17 shall apply to a request made under this section.

**6.** (1) Where a bodily substance has been given <sup>Request for a tissue sample</sup> under section 5 or has been found—

- (a) at the place where the offence was committed;
- (b) on anything worn or carried by the victim of the offence; or
- (c) on any thing or at any other place associated with the commission of the offence,

a police officer may, subject to subsection (2), request a tissue sample from a person who is detained, arrested or charged for the offence where the police officer has reasonable grounds for believing that—

- (i) that person was a party to the offence;
- (ii) the tissue sample will tend to confirm or disprove that person's involvement in the offence;
- (iii) DNA forensic analysis of a tissue sample from that person will provide evidence whether the bodily substance referred to above was from that person; and
- (iv) the request for consent to give a tissue sample is justified in all the circumstances.



(2) A police officer shall not make a request for a tissue sample unless he—

- (a) delivers the bodily substance mentioned in subsection (1) to the Forensic Science Centre; and
- (b) informs the person that he is entitled to request a copy of the record of the delivery.

(3) Where the police officer makes a request for a tissue sample he shall also give a copy of the record of the delivery mentioned in subsection (2) to the person, only if the person requests such a copy, showing that he has delivered the bodily substance mentioned in subsection (1) to the Forensic Science Centre.

(4) In determining whether a request is justified in all the circumstances as required under subsection (1)(iv), the police officer shall balance the public interest in obtaining evidence tending to confirm or disprove that a person was associated with the commission of or committed an offence against the public interest in upholding the physical integrity of the individual.

(5) In balancing those interests, the police officer shall have regard to the following matters:

- (a) the seriousness of the circumstances surrounding the commission of the offence and the gravity of the offence;
- (b) the degree of the person's alleged participation in the commission of the offence;
- (c) the age, physical and mental health of the person, to the extent that they are known to the police officer or can reasonably be discovered by the police officer;

- (d) whether there is a less intrusive but reasonably practicable way of obtaining evidence to confirm or disprove the person's alleged participation in the commission of the offence; and
- (e) any other matter considered relevant to balancing those interests.

(6) A police officer acting under subsection (4) shall make a declaration on oath that he took into account all the matters listed in subsection (5) before making a request.

7. A police officer may use reasonable force to <sup>Use of reasonable force</sup> prevent a person from destroying or contaminating any evidence that might be obtained from a tissue sample during the period that that person is detained, arrested or charged for an offence and until a tissue sample is taken.

8. (1) Where a request is made under section 6(1), a <sup>Written consent</sup> tissue sample shall not be taken from a person unless he gives consent in writing, as provided for in the prescribed form, in the presence of both the police officer and a Justice of the Peace.

(2) Where a request is made to a person under subsection (1) and he does not respond within a period of twelve hours after the request is made he shall be deemed to have refused to consent to the taking of the tissue sample.

9. Where a person has consented to the taking of a <sup>Withdrawal of consent</sup> tissue sample he may withdraw his consent either orally or in writing either before or during the taking, and from the time he withdraws his consent the taking shall be treated as one for which consent has been refused.

Right to consult

**10.** (1) A person shall have the right to consult with and have present an attorney-at-law, or an adult, of his choice before consenting to the taking of a tissue sample.

(2) A police officer shall inform the person of his right under subsection (1).

Private communication

**11.** Where a person does communicate or attempts to communicate with an attorney-at-law, or an adult, of his choice, that person is entitled to do so in private unless the police officer suspects on reasonable grounds that the person might attempt to destroy or contaminate any bodily substance that might be used as evidence in a court.

Waiver of rights

**12.** A person mentioned in section 10 may waive his right under that section but any such waiver shall be recorded in the prescribed form, in the presence of the Justice of the Peace, and the prescribed form shall contain a statement signed by the person that he has been informed of his right and that he has waived that right.

Information to be given to a victim or other person before making a request

**13.** Where it is intended that a bodily substance shall be requested from the victim of an offence or any other person associated with the commission of the offence, a police officer shall, before making that request and in the presence of a Justice of the Peace, inform the victim or that other person—

- (a) of the type of bodily substance required;
- (b) of the grounds for requesting it;
- (c) of the nature of the procedure by means of which it is to be taken;
- (d) of the purpose for which it is required;
- (e) that the giving of information under this section, and the giving of consent, if any, by the victim or that other person shall be recorded in writing, and that the victim or that other person is entitled to a copy of that record;

- (f) that the bodily substance shall be analysed and that the results of the analysis may be used as evidence in criminal investigation or prosecution;
- (g) of the rights of a person under sections 8, 9, 10, 11 and 12;
- (h) that the bodily substance shall be taken by a qualified person; and
- (i) that a person may refuse to consent to give a bodily substance.

**14.** Where it is intended that a tissue sample shall be taken from a person detained, arrested or charged for an offence, a police officer shall, before making a request and in the presence of a Justice of the Peace, inform the person—

Information to be given to a person detained, arrested or charged before making a request

- (a) of the grounds for requesting it;
- (b) of the nature of the procedure by means of which it is to be taken;
- (c) of the purpose for which the tissue sample is required;
- (d) that the giving of information under this section, and the giving of consent, if any, by the person shall be recorded in writing, and that the person is entitled to a copy of that record;
- (e) that the tissue sample shall be analysed and that the results of the analysis may be used as evidence in criminal investigation or prosecution;
- (f) of the rights of the person under sections 8, 9, 10, 11 and 12;
- (g) that the tissue sample shall be taken by a qualified person;
- (h) that a person may refuse to consent to give a tissue sample; and

- (i) of the consequences stated in section 18 that may result if he refuses to consent to give a tissue sample.

## Notice

**15. (1)** Where a request is made by a police officer to a person for a tissue sample, the police officer shall, on making that request, give to the person a copy of the notice mentioned in subsection (2).

(2) A notice given under this section shall—

(a) be in the prescribed form; and

(b) contain the following particulars:

- (i) a statement of the definition of a tissue sample and a bodily substance;
- (ii) a statement that it is believed that the person detained, arrested or charged for an offence has or may have committed the offence and is being requested to consent to the taking of a tissue sample;
- (iii) a statement that a victim or any other person associated with the commission of an offence is being requested to consent to the taking of a bodily substance;
- (iv) a statement that there are reasonable grounds to believe that DNA forensic analysis of the tissue sample or the bodily substance, as the case may be, would tend to confirm or disprove the person's involvement in or association with the commission of the offence;

- (v) a statement that a person is under no obligation to consent to give a tissue sample or a bodily substance;
- (vi) a statement that consent must be given in writing and in the presence of both the police officer and a Justice of the Peace;
- (vii) a statement that if a person consents to give a tissue sample or a bodily substance he may at any time before the tissue sample or bodily substance is taken withdraw that consent;
- (viii) a statement that a person has a right to consult with and have present an attorney-at-law, or an adult, of his choice before he consents to give a tissue sample or a bodily substance;
- (ix) a statement that a person may waive his right under subparagraph (viii) but that the waiver must be in writing, and signed by the police officer, the Justice of the Peace and the person;
- (x) a statement that a person is entitled to a copy of his written consent;
- (xi) a statement informing the person why the tissue sample or bodily substance is required and the nature of the procedure by means of which it is to be taken;

- (xii) a statement that unless within the period of twelve hours after the request is made the person consents to give a tissue sample or bodily substance, the person shall be deemed to have refused to consent to the taking of a tissue sample or bodily substance;
- (xiii) a statement that if the refusal is by a person detained, arrested, or charged for the offence, the State may make an application to a court for an order to take a tissue sample without his consent;
- (xiv) a statement that the tissue sample or bodily substance shall be analysed and may be used as evidence in criminal investigation or prosecution;
- (xv) a summary of sections 20 to 24;
- (xvi) a statement that the parent or guardian of a child or an incapable person can consent on behalf of such a person for a bodily substance to be taken but a tissue sample can be taken from such a person only by an order of a court;
- (xvii) a statement that a person is entitled to have an adult of his choice present while the tissue sample or bodily substance is being taken;
- (xviii) a statement that only a qualified person is entitled to take a tissue sample or bodily substance;

- (xix) a summary of the provisions relating to the procedure for taking a tissue sample or bodily substance;
- (xx) a statement that the tissue sample or bodily substance and any information derived from any DNA forensic analysis of the tissue sample or bodily substance will be kept in confidence by the State, subject to section 40;
- (xxi) a statement that a person is entitled to a copy of the DNA report in relation to a tissue sample or bodily substance that he gave;
- (xxii) a statement that the information derived from the analysis of the tissue sample or bodily substance will be stored in confidence in the index of DNA data records if the person is convicted for the offence or a related offence or if he consents where he is not convicted;
- (xxiii) a reference to section 43 relating to the destruction of a tissue sample or bodily substance;
- (xxiv) a statement that if a person detained, arrested or charged for an offence refuses to consent to give a tissue sample and he is indicted and tried for the offence, the court or jury may draw any inference from his refusal as appears proper in the circumstances; and
- (xxv) such other particulars as may be prescribed.



Reasons for refusal  
may be recorded

**16.** Where a person does not consent to give a tissue sample he may, in the presence of the police officer and the Justice of the Peace, record the reasons for his refusal in the prescribed form, and where he refuses to record his reasons then the police officer shall record the reasons, if any, in the prescribed form.

Copy of prescribed  
form to be given to  
person

**17.** The prescribed form mentioned in sections 8, 12 and 16 shall be signed by the police officer, the Justice of the Peace, and the person, if he will, in the presence of each other, and a copy of the prescribed form shall be given immediately by the police officer to the person or to any person he nominates to receive it on his behalf.

### PART III

#### OBTAINING A TISSUE SAMPLE BY A COURT ORDER

Court order to take a  
tissue sample

**18.** (1) Where a person, referred to in section 14, refuses to consent to give a tissue sample, a court may, on an application by the State, grant an order directing that a tissue sample shall be taken without his consent.

(2) Where a child or an incapable person is detained, arrested or charged for an offence, a tissue sample shall not be taken from that child or that incapable person except by an order of a court.

(3) The provisions of this Part and Part IV shall also apply to an order made under subsection(2).

Notice to child or  
incapable person

**19.** (1) Where the State makes an application to a summary court or decides to make an application to the High Court, as the case may be, for an order under section 18 in relation to a child or an incapable person, then—

(a) at the time when the summary court application is served on the parent or guardian of the child or incapable person;  
or

(b) prior to filing of the application before the High Court,

the State shall cause to be served personally on the parent or guardian of the child or incapable person, a copy of the notice mentioned in section 15.

**20.** (1) Where an application, referred to in section 18, is made to a summary court, it may be made by the police officer in charge of the police station or the investigating officer. Summary court application

(2) An application for an order under this section shall be made in writing, be supported by information on oath, and state the type of tissue sample required.

(3) Where an application is made under this section, the State shall cause to be served personally a copy of the application on the person from whom the tissue sample is to be taken or, in the case of a child or an incapable person, on the parent or guardian of that child or that incapable person.

(4) Section 25 shall apply to an application made under this section.

**21.** Where an application is made under section 20 the person from whom the tissue sample is to be taken is entitled to appear and defend the application through his attorney-at-law. Right to defend application

**22.** A summary court shall make an order in the presence of both the person from whom the tissue sample is to be taken and his attorney-at-law, unless the court orders otherwise. Order to be made in presence of defendant

**23.** Where the person against whom the order under section 20 is sought is a child or an incapable person, a summary court shall make the order in the presence of both that person, or his parent or guardian, or an adult of his choice, and his attorney-at-law, unless the court orders otherwise. Order against a child or incapable person

High Court  
application

**24.** (1) An application for an order to take a tissue sample where a person refuses to give consent may be made by the State to the High Court.

(2) An application under this section shall be *ex parte*.

(3) Section 25 shall apply to an application made under this section.

Consideration for  
granting an order

**25.** (1) Where a court decides to grant an order under section 18, the State shall satisfy the court that on the evidence before it there are reasonable grounds to believe that—

- (a) the person against whom the order is sought was associated with the commission of or committed an offence;
- (b) the tissue sample sought to be taken is likely to produce evidence tending to confirm or disprove that that person was associated with the commission of or committed an offence; and
- (c) the taking of the tissue sample is justified in all the circumstances.

(2) In determining whether an order is justified in all the circumstances, the court shall balance the public interest in obtaining evidence tending to confirm or disprove that a person was associated with the commission of or committed an offence against the public interest in upholding the physical integrity of the individual.

(3) In balancing those interests, the court shall have regard to the following matters:

- (a) the seriousness of the circumstances surrounding the commission of the offence and the gravity of the offence;
- (b) the degree of the person's alleged participation in the commission of the offence;

- (c) the age, physical and mental health of the person, to the extent that they are known to the court or can reasonably be discovered by the court;
- (d) if the person is a child or an incapable person—the welfare of that person;
- (e) whether there is a less intrusive but reasonable practicable way of obtaining evidence tending to confirm or disprove that the person was associated with the commission of or committed the offence;
- (f) if the person gives any reason for refusing to consent—the reason;
- (g) whether there is a DNA report in relation to any bodily substance; and
- (h) any other matter considered relevant to balancing those interests.

(4) In considering an application under section 18, the court may take into account any oral or documentary material that the court considers relevant, whether or not it would be admissible in a court.

**26.** Where a court makes an order directing that a a Form of court order tissue sample is to be taken from a person, the order shall—

- (a) be made in writing;
- (b) state that it shall expire after forty-eight hours after the date and time when it was made;
- (c) be accompanied by written reasons;
- (d) state the type of tissue sample to be taken;
- (e) state that reasonable force may be used to take the tissue sample; and
- (f) state any other relevant matter.

Copy of order

**27.** (1) Where a summary court makes an order it shall inform the person that reasonable force may be used to take the tissue sample, explain the order to the person, and give a copy of the order to the person.

(2) Where the High Court makes an order, the State shall cause to be served personally a copy of the order on the person from whom the tissue sample is to be taken.

Extension of court order

**28.** (1) Where an order, made under section 18, has expired, as provided for under section 26(b), the State may apply within twenty-four hours after its expiration to the court which made the order for an extension of the order.

(2) On an application made under this section, the State shall satisfy the court why the order was not carried out within the prescribed time and why the court should grant an extension of the order.

(3) Where the court decides to grant an extension of the order, the extension shall not exceed twenty-four hours from the date and time of the order granting the extension.

(4) A court shall not entertain any application under this section for a further extension.

(5) The time spent by a person before any court to challenge an order granted on an *ex parte* application shall not be taken into account in calculating the forty-eight hours specified in section 26(b).

#### PART IV

##### PROCEDURE FOR TAKING A TISSUE SAMPLE AND BODILY SUBSTANCE

Qualified person

**29.** A tissue sample and a bodily substance shall be taken only by a qualified person.

**30.** (1) Where a person consents to the taking of a <sup>Time limit to take a tissue sample or bodily substance</sup> tissue sample or bodily substance, the police officer shall ensure that the person is taken to a qualified person within forty-eight hours of his response for the tissue sample or bodily substance to be taken.

(2) Where a court makes an order, a police officer shall ensure that the person from whom the tissue sample is to be taken is taken as quickly as reasonably possible to a qualified person but in any case within forty-eight hours after the date and time specified in the order.

**31.** (1) When a qualified person takes a tissue <sup>How a tissue sample or bodily substance to be dealt with</sup> sample he shall immediately ask the person from whom the tissue sample is taken whether or not he wishes to have a part of the tissue sample for the purpose of having it analysed on his behalf.

(2) If the person responds in the affirmative to the question put to him in accordance with subsection (1), the qualified person shall divide the tissue sample into two parts, and he shall place each part in a separate but similar container, which he shall then seal and label in accordance with subsection (4), and give one of the DNA package immediately to the person from whom the tissue sample was taken or, if that person is in custody other than pursuant to a warrant issued under section 33, to any person nominated by that person for the purpose.

(3) If the person responds in the negative or remains silent to the question put to him in accordance with subsection (1), the qualified person shall—

- (a) place all of the tissue sample in a container and affix a label to it with an identifying mark; and
- (b) record the person's response or the fact of his silence, as the case may be, in the prescribed form.

(4) A qualified person who takes a tissue sample or a bodily substance shall affix a label with an identifying mark to the container so as to distinguish it from any other container and the qualified person shall then seal the container in a package and affix a label to the package with the same identifying mark that is shown on the label affixed to the container (hereinafter referred to as a “DNA package”).

(5) Where the bodily substance is that of the victim of the offence or any other person associated with the commission of the offence under investigation, the identifying marks on the label shall include the name of the victim or that person and the name, rank and service number of the police officer who brought the victim or that person to the qualified person and who shall collect the DNA package.

(6) Where the tissue sample is that of the person detained, arrested or charged for an offence, the identifying marks on the label shall include the name of that person and the name, rank and service number of the police officer who brought that person to the qualified person and who shall collect the DNA package.

(7) A qualified person who takes a tissue sample or a bodily substance shall also complete the prescribed form stating the following information:

- (a) the name, address, date of birth, and gender of the person from whom the tissue sample or bodily substance is taken;
- (b) the date, time and place of the taking of the tissue sample or bodily substance;
- (c) a statement that both the container and the package holding the tissue sample or bodily substance are labelled and sealed;
- (d) the information on the label affixed to the container and the label affixed to the package;

- (e) the nature of the tissue sample or bodily substance;
- (f) the name, rank and service number of the police officer collecting the DNA package; and
- (g) the name and signature of the person taking the tissue sample or bodily substance.

(8) After the qualified person has sealed and labelled the DNA package, he shall give the package immediately to the police officer who shall then sign the prescribed form.

(9) A container and a package used under this Act shall be such as are approved by the Forensic Science Centre.

(10) An anti-coagulant substance may be added by a qualified person to a sample of blood by placing it in the container, whether before or after the sample of blood is taken and placed in the container.

(11) Where a qualified person acts under subsection (10) he shall, in writing, inform the person from whom the sample of blood was taken or the person's attorney-at-law that an anti-coagulant was added to the sample of blood.

**32.** (1) Where an order is made under section 18 and, upon service of the order on the person to whom it relates, the person agrees to comply with the order, then a police officer shall take the person to a qualified person for the tissue sample to be taken and give a copy of the order to the qualified person.

Police to take  
defendant to  
qualified person

(2) Where the person mentioned in subsection (1) refuses to comply with the order, the State may apply for a warrant under section 33.



Attendance of person  
in or not in custody

**33. (1)** Where an order is made under section 18 and the person from whom the tissue sample is to be taken is not in custody and he refuses to comply with the order, the court may, on an *ex parte* application by the State, issue a warrant for his arrest and detention until a tissue sample is taken from him in accordance with the order.

(2) A warrant issued under subsection (1) shall—

(a) be in a prescribed form;

(b) authorise—

(i) the arrest of the person to whom the order relates; and

(ii) the detention of that person for as long as is reasonably necessary to take a tissue sample from that person in accordance with the order, but in no case longer than twenty-four hours; and

(c) expire—

(i) immediately after the tissue sample is taken from the person to whom the order relates in accordance with the order; or

(ii) on the expiry of the date specified in the order as the date on which that person is required to give a tissue sample, whichever occurs first.

(3) The power to arrest and detain a person pursuant to a warrant issued under subsection (1) may be exercised only on one occasion.

(4) The police officer shall, before executing the warrant, inform the person in respect of whom the warrant is made that he is entitled to consult with an attorney-at-law, or an adult, of his choice.

(5) Where a person in respect of whom an order is made is in custody, the person having custody of that person shall, without further authority than this section, cause that person to attend at a place where, and at the time when, a tissue sample is to be taken in accordance with the order.

**34.** A qualified person who takes a tissue sample or Taking a tissue sample or bodily substance bodily substance from another person—

(a) shall ensure that—

- (i) it is taken in circumstances affording reasonable privacy to that other person;
- (ii) it is taken in the presence or view of a person who is of the same sex as that other person;
- (iii) it is not taken in the presence or view of a person whose presence is not necessary for the purpose of taking the tissue sample or bodily substance;
- (iv) the taking does not involve the removal of more clothing than is necessary; and
- (v) the taking does not involve more visual inspection than is necessary;

(b) shall ensure that the procedure—

- (i) is carried out in a manner consistent with appropriate medical or other relevant professional standards;
- (ii) is not carried out in a cruel, inhuman or degrading manner; and

(c) may use reasonable force to take the tissue sample or bodily substance, or to prevent the loss, destruction or contamination of any tissue sample or bodily substance.

Who may be present  
when a tissue sample  
or bodily substance is  
taken

**35.** (1) A person from whom a tissue sample or bodily substance is to be taken shall be informed by the police officer at the time he makes the request for the tissue sample or bodily substance or at least six hours before the tissue sample or bodily substance is to be taken, whether with the person's written consent or by a court order, as the case may be, that the person is entitled to have an adult of his choice present while the tissue sample or bodily substance is being taken by a qualified person.

(2) The adult referred to in subsection (1) shall be informed by the person from whom the tissue sample or bodily substance is to be taken of the date on and time and place at which the tissue sample or bodily substance is to be taken and that he is requested to be present at that time.

(3) Where the person from whom a tissue sample is to be taken is in custody, the police officer who makes the request for the tissue sample shall also inform the adult referred to in subsection (1) of the date on and time and place at which the tissue sample is to be taken and that he is requested to be present at that time.

(4) Where the adult, or any other adult, requested to be present is unable to be present, the police officer shall ensure that a Justice of the Peace is present while the tissue sample or bodily substance is being taken by the qualified person.

(5) A person from whom a tissue sample or bodily substance is to be taken may waive his right under this section and the prescribed form shall contain a statement, to be signed by the person, that he has been informed of his right by the police officer in the presence of a Justice of the Peace and that he has waived that right.

(6) The prescribed form mentioned in this Part, except under section 33(2), shall be signed by the police officer and the person from whom the tissue sample or bodily substance is to be taken, if he will, and by the Justice of the Peace, as the case may be, or, in the case of a child or an incapable person, by the parent or guardian of that child or that incapable person, in the presence of each other.

## PART V

### GENERAL

**36.** Where a person, who is serving a term of imprisonment, has—

Taking a tissue sample after conviction

- (a) not given a tissue sample; and
- (b) exhausted all avenues of appeal or the time to file an appeal has expired,

a tissue sample shall be taken from him and the State may use reasonable force to take it.

**37. (1)** A police officer shall ensure that between the time when he collects a DNA package from a qualified person and the time when he delivers it to the Forensic Science Centre that it is properly stored.

Storage and delivery of a DNA package

(2) The police officer shall deliver the DNA package to the Forensic Science Centre within five days from the date he collects it.

**38. (1)** A person who receives a DNA package at the Forensic Science Centre for testing shall ensure that the package is properly sealed, labelled, and identifiable both by him and by the police officer who delivers the package to him.

Information to be recorded when a DNA package is delivered, and tested

(2) The person who receives a DNA package shall complete the prescribed form stating the following information:

- (a) the name, rank and service number of the police officer who delivers the package;

- (b) the date on and time at which he receives the package;
- (c) the information on the label attached to the package;
- (d) a statement that the seal of the package is not broken or opened or tampered with;
- (e) his name and signature; and
- (f) any other relevant information.

(3) The police officer shall then sign the prescribed form.

(4) A tester shall prepare and provide a DNA report in writing to the court stating the following information:

- (a) a statement that the seal of the container or the DNA package is not broken or opened or tampered with;
- (b) the information on the label affixed to the container and on the label affixed to the DNA package;
- (c) the period of time the DNA forensic analysis took to be completed;
- (d) the results of the DNA forensic analysis;
- (e) his name and signature; and
- (f) any other relevant information.

DNA data base

**39.** (1) Subject to subsections (2) and (3), the Director shall establish an index of DNA data records derived from the tissue samples and the bodily substances submitted for DNA forensic analysis under this Act.

(2) Where a person is—

- (a) convicted for an offence and the final appellate court affirms his conviction; or
- (b) not convicted for an offence but he consents,

the DNA data derived from the analysis of the tissue sample or bodily substance he gave, as the case may be, shall be kept as part of the index of DNA data records.

(3) Where a person is not convicted for an offence and he does not consent but he has been convicted for a similar offence within the past five years or he has a charge for a similar offence pending against him, the DNA data derived from the analysis of the tissue sample or bodily substance he gave, as the case may be, shall be kept as part of the index of DNA data records for five years.

(4) The Director shall ensure that DNA data is securely stored and remains confidential.

**40.** (1) The Director shall not disclose any tissue sample, bodily substance or DNA data obtained, stored or maintained under this Act, except—

Disclosure and  
research

- (a) to a law enforcement agency of the State in the course of a criminal investigation or proceedings;
- (b) to the person from whom the tissue sample or bodily substance was taken;
- (c) to a party in proceedings under the Status of Children Act, or under any other written law in which the question of parentage arises; or
- (d) to a country making a request, which is accepted by the Central Authority, for mutual assistance in criminal matters.

Chap. 46:07

(2) The Director may, upon an application in writing, supply DNA data records, without disclosing personally identifiable information, to a governmental agency or an educational institution for research purposes.

(3) Notwithstanding this section, the Forensic Science Centre shall have the right to use any tissue sample, bodily substance and DNA data obtained, stored or maintained under this Act for research purposes, without disclosing personally identifiable information.

DNA Board

**41.** (1) The Minister shall appoint a board (hereinafter called “the DNA Board”) comprising of not more than seven members, including a molecular biologist, a population geneticist, a forensic scientist, or a pathologist, or other persons trained in similar disciplines and a member of the legal profession, each of whom shall be of at least ten years standing.

(2) The DNA Board shall monitor annually—

- (a) the standards for testing the proficiency of conducting DNA forensic analysis;
- (b) the standards for the protection of tissue samples, bodily substances and DNA data; and
- (c) the research mentioned under section 40(3).

(3) The DNA Board, in the exercise of its powers under this section, shall issue a certificate of approval annually to the Forensic Science Centre where it is satisfied that the Centre has maintained, as approved by the DNA Board, international standards in relation to DNA forensic analysis.

Consultation by  
Director

**42.** (1) The Director shall consult such persons trained in the sciences as he may think suitable to advise him in establishing the standards for testing the proficiency of conducting DNA forensic analysis and the methods of conducting such analysis, the standards for the protection of tissue samples, bodily substances and DNA data, and generally for conducting the business of the Forensic Science Centre as it relates to DNA forensic analysis.

(2) The DNA Board may advise the Director on the standards for testing the proficiency of conducting DNA forensic analysis, on the standards for the protection of tissue samples, bodily substances and DNA data, and generally for conducting the business of the Forensic Science Centre as it relates to DNA forensic analysis, and the Director shall take into consideration that advice.

(3) The Director, after taking into consideration such advice as he receives, shall maintain, and revise from time to time, standards for testing the proficiency of conducting DNA forensic analysis and standards for the protection of tissue samples, bodily substances and DNA data.

**43.** (1) Subject to this section, a tissue sample or a bodily substance, as the case may be, shall be destroyed by the Forensic Science Centre as soon as it has fulfilled the purpose for which it was taken.

Destruction of a  
tissue sample and  
bodily substance

(2) Subject to section 39, in each case where the Director acts under this section except subsection (5), he shall also delete the DNA data stored in the index of DNA data records in relation to the tissue sample or bodily substance that he destroys.

(3) Where a tissue sample has been taken from a person who is detained, or arrested for an offence and he is not charged or prosecuted for that offence, he may—

- (a) in case of a summary offence, after six months from the date of the arrest or detention; or
- (b) in the case of an indictable offence, after two years from the date of the arrest or detention,

request, in writing, the Director to destroy the tissue sample.

(4) Where the person from whom a tissue sample has been taken fails to request that the sample be destroyed under subsection (3), the Director shall destroy the sample after the expiration of the respective periods mentioned in subsection (3).

(5) Where a tissue sample has been taken from a person who is convicted of a summary offence or an indictable offence and—

- (a) the time to file an appeal has expired; or
- (b) he has exhausted all avenues of appeal,

the Director shall, upon written notice to that effect from the Registrar of the Supreme Court or the Clerk of the Peace, as the case may be, destroy the tissue sample.



(6) Where a tissue sample has been taken from a person who is prosecuted for an offence and he is acquitted of that offence or the proceedings are dismissed for want of prosecution or any other offence in respect of the same transaction, without prejudice to any right of appeal of the State, the court may order the Director to destroy the tissue sample.

(7) Where a tissue sample has been taken from a person in relation to an offence or any other offence in respect of the same transaction and—

- (a) that person is discharged after a preliminary inquiry into the offence;
- (b) the information or complaint charging the person with the offence is withdrawn by the prosecution; or
- (c) proceedings against the person for the offence is stayed,

the Registrar of the Supreme Court or the Clerk of the Peace, as the case may be, shall, after the expiration of one year, request the Director to destroy the tissue sample, unless, during that year, a new information or complaint is laid or an indictment is preferred charging the person with the offence or any other offence in respect of the same transaction or the proceedings are recommenced.

(8) Where, under this section, a tissue sample or bodily substance is to be destroyed, the person from whom the tissue sample or bodily substance, as the case may be, was taken is entitled to witness its destruction.

(9) Within one month of the destruction of a tissue sample or a bodily substance under this section and the deletion of the DNA data under subsection (2), the Director shall provide the person from whom the tissue sample or the bodily substance was taken, as the case may be, with a document certifying the destruction or the deletion thereof.

**44.** Notwithstanding section 43, a court may order that a tissue sample or a bodily substance that has been taken under this Act, shall not be destroyed during any period that the court considers appropriate if the court is satisfied that the tissue sample or the bodily substance, as the case may be, might reasonably be required in an investigation or prosecution of that person for an offence or any other person for the same offence or any other offence in respect of the same transaction.

Power of court to preserve a tissue sample or bodily substance

**45.** (1) Where a person refuses, without good cause, to consent to the taking of a tissue sample in any proceedings against that person for an offence or a related offence—

Refusal to consent

- (a) the court in determining whether to commit that person for trial; or
- (b) the court or jury in determining whether that person is guilty of the offence charged or a related offence,

may draw such inference, if any, from the refusal as appears proper in the circumstances.

(2) Where a person gives reasons under section 16, in any proceedings in which the jury might draw an inference pursuant to subsection (1), the Judge shall tell the jury—

- (a) the reasons given; and
- (b) that the reasons given must be good reasons,

for the person's refusal to allow a tissue sample to be taken.

**46.** Subject to section 5(2) and notwithstanding any other written law, a person shall not be capable of consenting on behalf of another person to the taking of a tissue sample or bodily substance from that other person in response to a request made under this Act.

Consent may not be given on person's behalf

## Indemnity

**47.** (1) No proceedings, civil or criminal, shall be brought against a person in respect of the taking of a tissue sample or bodily substance using reasonable force in accordance with this Act.

(2) Subsection (1) shall not apply to any proceedings on the ground of any negligent act or omission in the taking of a tissue sample or a bodily substance.

## Standard of proof

**48.** Any question of fact to be determined by a court on an application made under this Act shall be determined on the balance of probabilities.

## Non-attendance of persons not to affect admissibility of evidence

**49.** Without prejudice to section 56, no evidence obtained as a result of a tissue sample or a bodily substance taken from a person under this Act shall be inadmissible in any proceedings merely because a person chosen pursuant to section 35 is not present during the taking of the tissue sample or bodily substance, if all reasonable steps have been taken to ensure that the person so chosen is notified—

- (a) that the person from whom the tissue sample or bodily substance is to be taken wishes him to be present during the taking of the tissue sample or bodily substance; and
- (b) of the date on, and the time and place at, which the tissue sample or bodily substance is to be taken.

## Breach of order not punishable as contempt

**50.** No proceedings for contempt of court shall be brought against a person in respect of any refusal or failure to comply with an order made by a court under this Act.

## Persons not compelled

**51.** Nothing in this Act—

- (a) compels a qualified person to take a tissue sample or bodily substance from a person; or

- (b) compels a person chosen pursuant to section 35 to be present during the taking of a tissue sample or bodily substance.

**52.** (1) When a bodily substance referred to in section 6(1) is analysed by the State, any person charged for an offence in relation to that bodily substance is entitled, upon request, to a copy of the record of that analysis and it shall be made available to him or to an attorney-at-law, or an adult, of his choice as soon as practicable and in any event before proceedings are commenced.

Record of analysis to be made available

(2) When a tissue sample taken pursuant to this Act is analysed by the State, any person charged for an offence in relation to that tissue sample is entitled, upon request, to a copy of the record of that analysis and the record of any comparison made between that analysis and any analysis of the bodily substance referred to in section 6(1), and the copy of the record of the analysis and the comparative analysis shall be made available to him or to an attorney-at-law, or an adult, of his choice, as soon as practicable and in any event before proceedings are commenced.

**53.** (1) A person who wilfully and unlawfully—

Offences

- (a) obtains a tissue sample or a bodily substance without consent or a court order, as the case may be;
- (b) discloses or obtains a tissue sample or a bodily substance without authorisation;
- (c) discloses or obtains DNA data without authorisation;
- (d) breaks the seal of or opens or causes to be opened any DNA package;
- (e) in any manner tampers with the container or package containing a tissue sample or a bodily substance;

- (f) falsifies any DNA data stored in the index of DNA data records by the addition, deletion, or modification of any information in that index;
- (g) provides false information with the intent that it should be stored in the index of DNA data records;
- (h) knowing that he is not authorised to do so adds to, or deletes from, the index of DNA data records any information relating to any person;
- (i) gains or attempts to gain access to the index of DNA data records;
- (j) gains or attempts to gain access to a tissue sample or a bodily substance; or
- (k) uses a tissue sample or a bodily substance without authorisation,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.

(2) A person who, for the purpose of providing a tissue sample or a bodily substance, as the case may be, under this Act, personates any other person commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for three years.

Post-conviction  
forensic analysis

**54.** Where, before the coming into force of this Act, a person—

- (a) was convicted of an offence; and
- (b) has filed an appeal against that conviction or sentence or both,

he may make a request, in writing, to the Commissioner of Police for a DNA forensic analysis and such analysis shall be carried out if—

- (i) evidence containing DNA material was collected in connection with the trial and it still exist; and

- (ii) he consents to give a tissue sample or bodily substance.

**55.** (1) In any civil or criminal proceedings a <sup>Documentary evidence</sup> document purporting to contain information required to be recorded under this Act is admissible as evidence of the facts and opinion stated in it without proof of the signature or appointment of the tester who recorded the information, unless the court, acting *ex proprio motu* or at the request of a party to the proceedings, requires that person to be called as a witness.

(2) The court is not bound to require the attendance of that person as a witness if the court is of the opinion that the request for such attendance is frivolous or vexatious or made for the purpose of delaying or defeating the ends of justice.

**56.** (1) Notwithstanding any other law to the <sup>Inadmissible evidence</sup> contrary, where evidence is obtained in breach of this Act such evidence shall be inadmissible in any proceedings against the person in respect of that evidence.

(2) Subsection (1) does not prejudice the right of that person to rely on any such evidence in any proceedings.

**57.** The Minister may make regulations for the <sup>Regulations</sup> purpose of giving effect to this Act.

**58.** The written laws referred to in the first <sup>Amendments Schedule</sup> column of the Schedule are amended as correspondingly set out in the second column.

## SCHEDULE

(Section 58)

## FIRST COLUMN

## SECOND COLUMN

*Written Laws**Amendment*

Evidence Act,  
Chap. 7:02

A. Section 19 is amended in subsection (4) by amending the definition of “report” by inserting after the words “post mortem report” the words “ or a DNA report.”.

The Status of  
Children Act,  
Chap. 46:07

B. Section 2 is amended by repealing subsection (2) and substituting the following subsection:

“(2) For the purpose of sections 13 to 17 inclusive:

“tissue sample” means a sample of blood, saliva, or hair taken from a person;

“DNA forensic analysis” means the analysis carried out by a tester at the Forensic Science Centre, or by any laboratory approved by the Minister, to determine the inheritable characteristics of the person from whom a tissue sample was taken and the comparison of the results of that tissue sample with the results of a tissue sample taken from another person, and includes any incidental tests associated with any of those analyses;

“qualified person” means a registered medical practitioner or a person registered under Part II or III of the Nurses and Midwives Registration Act acting under the supervision of a registered medical practitioner;

“tester” means the Director, the Deputy Director, or a Scientific Officer attached to the Forensic Science Centre, or a suitably qualified person from any laboratory approved by the Minister.”.

Chap. 29:53

C. Section 13 is amended:

(a) by deleting the heading “Blood Tests” and substituting the heading “DNA Forensic Analysis”;

(b) by repealing subsection (1) and substituting the following subsection:

“ (1) Where in any civil proceedings the question of whether a person is the parent of another person (hereinafter referred to as “the subject”)

falls to be determined by a court hearing the proceedings, the court may, on an application by any party to the proceedings, give a direction for the use of DNA forensic analysis to ascertain whether such analysis shows that a party to the proceedings is or is not the parent of the subject, and for the taking, within a period to be specified in the direction, of a tissue sample from the subject and from any person alleged to be the parent of the subject, or from any, or any two, of those persons.”;

- (c) by repealing subsection (3) and substituting the following subsection:

“ (3) A tester shall make to the court, by which the direction mentioned in subsection (1) was given, a DNA report in which he shall state—

(a) the results of the DNA forensic analysis;  
and

(b) whether the person to whom the report relates is or is not the parent of the subject,

and the report shall be received by the court as evidence in the proceedings of the matters stated in it.”;

- (d) in subsection (5) by deleting the words “tests taken” and “those tests” and substituting the words “DNA forensic analysis” and “such analysis” respectively;

- (e) in subsection (6) by deleting the words “testing blood samples” and substituting the words “analysing tissue samples”; and

- (f) by deleting the marginal note and substituting the following new marginal note—

“Power of court to require use of DNA forensic analysis”.

D. Sections 14 to 16 are amended by deleting the words “blood sample” or “blood samples” wherever they appear and substituting the words “tissue sample” or “tissue samples”, as the case may be.

E. Section 14 is amended in subsection (4) by deleting the words “blood tests” and substituting the words “DNA forensic analysis”.



F. Section 16 is amended—

- (a) in subsection(1) by deleting the words “a test” and substituting the words “DNA forensic analysis”; and
- (b) in the marginal note by deleting the words “re blood tests” and substituting the words “re DNA forensic analysis”.

G. Delete section 17 and substitute the following section:

“Regulations 17. The Minister may make regulations to give effect to any directions under section 13 and, in particular, any such regulations may—

- (a) provide that tissue samples shall not be taken except by a qualified person;
- (b) regulate the taking, identification and transport of tissue samples;
- (c) require the production at the time when a tissue sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulations;
- (d) require any person from whom a tissue sample is to be taken or a qualified person to state in writing whether the person from whom the sample is to be taken has, during such period as may be specified in the regulations, suffered from any such illness, as may be so specified, or has received a blood transfusion of blood;
- (e) provide that DNA forensic analysis shall not be carried out except at such other laboratories, apart from the Forensic Science Centre, as may be approved by the Minister;
- (f) regulate the charges that may be made for the taking and analysing of tissue samples and for the making of a DNA report to a court under section 13;
- (g) make provision for securing that so far as practicable tissue samples to be analysed for the purpose of giving effect to a direction under section 13 are analysed by the same person;
- (h) prescribed the form of the DNA report to be made to a court under section 13.”.

Passed in the Senate this 8th day of December, 1999.

N. COX

*Clerk of the Senate*

IT IS HEREBY CERTIFIED that this Act is one of the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of 23 members of the Senate.

N. COX

*Clerk of the Senate*

Passed in the House of Representatives this 12th day of May, 2000.

J. SAMPSON-JACENT

*Clerk of the House*

IT IS HEREBY CERTIFIED that this Act is one of the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of 29 members of the House.

J. SAMPSON-JACENT

*Clerk of the House*

House of Representatives amendments agreed to by the Senate this 16th day of May, 2000.

N. COX

*Clerk of the Senate*