

THE DEOXYRIBONUCLEIC ACID (DNA) ACT, 2007

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Fifth Session Eighth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 24 of 2007

[L.S.]

AN ACT to repeal and replace the Deoxyribonucleic Acid
(DNA) Identification Act, 2000

[Assented to 28th September, 2007]

WHEREAS it is enacted *inter alia* by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which this 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 section 13(2) of the Constitution that an Act of Parliament to which this 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 votes of not less than three-fifths of all 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 **1.** This Act may be cited as the Deoxyribonucleic Acid (DNA) Act, 2007.

Act inconsistent with sections 4 and 5 of the Constitution Chap. 1:01 **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.** For the purposes of this Act—

“Central Authority” means the person or authority designated as the Central Authority for Trinidad and Tobago in accordance with section 3 of the Mutual Assistance in Criminal Matters Act, 1997;

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

“court” means a Judge in Chambers;

“crime scene” includes—

(a) any place where an offence was committed;

- (b) anything found on or any foreign object found within the body or any part of the body, of the victim;
- (c) anything worn or carried by the victim at the time when an offence was committed;
- (d) anything found on or any foreign object found within the body or any part of the body, of a suspect;
- (e) anything found at any place associated with the commission of an offence; or
- (f) any location where evidence may be derived in relation to an offence;

“crime scene database” means an index which contains DNA profiles derived from a crime scene;

“Custodian” means a person appointed under section 42;

“DNA” means deoxyribonucleic acid;

“DNA Board” means a board established under section 34;

“DNA data” means information obtained from the Forensic DNA Databank;

“DNA profile” means the results of forensic DNA analysis;

“DNA Register” means the register in which all information that is required to be documented by a police officer under this Act, is so recorded;

“forensic DNA analysis” means the analysis of genetic material;

“Forensic DNA Databank” means the electronic or other collection of DNA profiles attributed to individuals or crime scenes;

“forensic DNA laboratory” means a place which is approved under section 33, to conduct forensic DNA analysis for the purposes of this Act;

“incapable person” means a person who by reason of his physical or mental condition is unable of indicating whether he consents or does not consent to give a non-intimate or an intimate sample;

“insufficient” in relation to a sample, means insufficient in respect of quantity for the purpose of enabling information to be produced by means of forensic DNA analysis used or to be used in relation to the DNA sample;

“intimate sample” means—

- (a) a sample of venous blood;
- (b) a urine sample;
- (c) a sample of semen or other tissue fluid obtained by breaking the skin;
- (d) pubic hair;
- (e) a dental impression; or
- (f) a swab taken from—
 - (i) any part of a person’s genitals; or
 - (ii) a person’s bodily orifice other than the mouth;

“investigating officer” means any officer involved in the investigation of an offence;

“Minister” means the Minister to whom responsibility for national security is assigned;

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a finger nail or toe nail or from under a finger nail or toe nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva; or
- (e) skin impression;

“non-intimate and intimate sample database” means an index which contains DNA profiles derived from the non-intimate or intimate samples of suspects;

“offence” means all indictable offences and all summary offences punishable by a term of imprisonment exceeding six months;

“Protective Services” has the meaning assigned to it in section 2 of the Protective Services (Compensation) Act, 1996;

Act No. 22 of 1996

“protective services database” means an index which contains DNA profiles derived from officers of the Protective Services under sections 10(2) and 12;

“qualified person” means—

- (a) a registered medical practitioner under the Medical Board Act, or a Chap. 29:50 person registered under Part II or III of the Nurses and Midwives Registration Act, acting under the Chap. 29:53 supervision of a registered medical practitioner; or

(b) where the sample is a dental impression—

(i) a dentist; or

(ii) a dental auxiliary acting under the supervision of a dentist,

registered under the Dental Profession Act;

Chap. 29:54

“sample” includes a part of a non-intimate or an intimate sample or a DNA extract of a non-intimate or an intimate sample;

“search” in relation to a person’s sample means a check against DNA profiles on the Forensic DNA Databank;

“skin impression” means a record of the skin pattern produced by any method, of a person’s footprint or a similar impression of any part of a person’s body, other than his hand;

“tester” means a person qualified to conduct forensic DNA analysis on behalf of a forensic DNA laboratory;

“unsuitable” in relation to a sample means insufficient in respect of quality for the purpose of enabling information to be produced by means of forensic DNA analysis used or to be used in relation to the sample;

“volunteer database” means an index which contains DNA profiles derived from volunteers.

PART II

GROUNDS FOR OBTAINING A NON-INTIMATE SAMPLE WITHOUT
CONSENT

5. A non-intimate sample may be taken from a person without his consent where—

Taking a
non-intimate sample
without consent

- (a) he has been charged with an offence;
- (b) a stain derived from a crime scene exists and there are reasonable grounds for suspecting that that person was involved in the offence and for believing that forensic DNA analysis could confirm or disprove such suspicion;
- (c) he has had a non-intimate sample taken and that sample has proved to be either unsuitable or insufficient for forensic DNA analysis; or
- (d) he has been convicted of an offence and is serving a term of imprisonment.

PART III

OBTAINING A NON-INTIMATE SAMPLE FROM A SUSPECT

6. (1) A police officer is authorized to take a sample from a person under section 5(a), (b) and (c).

Who may take
sample

(2) A qualified person is authorized to take a sample from a person under section 5(d).

7. (1) A police officer shall notify a person from whom a non-intimate sample is to be taken under section 5(a), (b) and (c)—

Notification

- (a) of the reason for taking a sample; and
- (b) that his DNA profile may be the subject of a search.

(2) The Notification given under this section shall be in the form set out as Form 1 in the First Schedule.

Form 1
First Schedule

(3) A police officer shall record in the DNA Register, the reason for taking a non-intimate sample and the fact that the person was notified in accordance with subsection (1).

Taking a second sample

8. (1) Where a non-intimate sample is to be taken under section 5(c), a police officer shall cause a copy of a Notice to be served personally on the person from whom the non-intimate 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.

(2) A person who is given notice in accordance with subsection (1) shall, within twenty-four hours of the time of personal service, attend a police station.

Form 2

(3) The Notice shall be in the form set out as Form 2 in the First Schedule.

(4) A police officer may arrest without warrant any person who fails to comply with the Notice.

PART IV

OBTAINING A SAMPLE FROM A VOLUNTEER OR AN OFFICER OF THE PROTECTIVE SERVICES

Victims and other persons may volunteer

9. (1) Subject to subsection (2), a victim or any person may volunteer to give a non-intimate or intimate sample for forensic DNA analysis in order to assist in the investigation of an offence.

(2) Where the victim is a child or an incapable person, a police officer shall obtain the consent of the parent or guardian of that child or incapable person before a non-intimate or intimate sample is taken.

(3) Where the person assisting in the investigation of an offence, other than a victim, is a child or an incapable person, a police officer shall request the parent or guardian of that child or incapable person to consent before a non-intimate or an intimate sample is taken.

(4) Where the parent or guardian denies a request made under subsection (3), or is unable to consent, a police officer may make an *ex-parte* application to the Court for an Order that the non-intimate or intimate sample be taken without the consent of the parent or guardian.

10. (1) A person, other than an officer of the Protective Services, who during the course of his duty attends the crime scene, may volunteer to give a non-intimate sample.

(2) An officer of the Protective Services who attends the crime scene shall give a non-intimate sample.

(3) A DNA profile derived from a non-intimate sample taken under—

- (a) subsection (1) shall be stored on the volunteer database; and
- (b) subsection (2) shall be stored on the protective services database.

11. A person to whom sections 9 and 10(1) apply shall—

- (a) volunteer in writing; or
- (b) where the person is the parent or guardian of a child or incapable person, give his consent,

in the form set out as Form 3 in the First Schedule.

12. (1) An officer of the Protective Services shall give a non-intimate sample.

(2) A non-intimate sample from a person under subsection (1) shall be taken in accordance with regulations made under the Police Service Act, the Fire Service Act and the Prison Service Act.

(3) A DNA profile derived from a non-intimate sample taken under subsection (1) shall be stored on the protective services database.

Procedure for taking
sample

13. (1) Sections 26, 27(1), (3) and (4), 28 and 30 shall apply to the taking of a DNA sample from a person under sections 9 and 10.

(2) Where the victim or any other person is a child or incapable person, the parent or guardian of that child or incapable person shall be present when an intimate sample is being taken.

PART V

OBTAINING AN INTIMATE SAMPLE FROM A SUSPECT WITH CONSENT

Request for an
intimate sample

14. (1) A police officer who has reasonable grounds for believing that an offence has been committed by a suspect, shall seek the written authorization from an officer of the First Division to permit him to request an intimate sample from the suspect.

(2) An officer of the First Division may give the authorization sought under subsection (1), where there are reasonable grounds for—

- (a) suspecting the involvement of the person from whom the sample is to be taken in an offence; and
- (b) believing that the sample will tend to confirm or disprove the involvement of such person.

(3) Notwithstanding subsection (2), an authorization for a request for an intimate sample may also be given where two or more non-intimate samples from the person from whom they were taken, have proved unsuitable or insufficient.

(4) Where an authorization is given and it is proposed that an intimate sample shall be taken in pursuance of the authorization, a police officer shall seek the consent of the suspect and before he gives his consent the police officer shall—

- (a) show him a copy of the authorization and where necessary read it to him;

- (b) inform him that if he consents, the sample may be the subject of a search;
- (c) advise that if he does not respond within a period of two hours after the request is made, he is deemed to have refused to consent to the taking of the sample;
- (d) inform him of his right to withdraw his consent before the sample is taken;
- (e) inform him that he has the right to consult with and have present an attorney-at-law, or an adult of his choice, before consenting to the taking of the intimate sample; and
- (f) inform him that he may waive his right under paragraph (e), in the form set out as Form 4 in the First Schedule, in the ^{Form 4} presence of an officer of the First Division.

(5) A police officer shall record the following information in the DNA Register, within twenty-four hours after the intimate sample is taken:

- (a) the authorization by virtue of which it was taken;
- (b) the grounds for giving the authorization;
- (c) the fact that the appropriate consent was given; and
- (d) the fact that the person has been informed that his profile may be the subject of a search.

15. Where a person consents under section 14(4) he shall consent in the form set out as Form 5 in the First ^{Consent to intimate sample} _{Form 5} Schedule, in the presence of both the police officer from whom the request is made and the police officer from whom authorization is given under section 14(2).

16. Where a person has consented to the taking of an intimate sample he may withdraw his consent in the ^{Withdrawal of consent} form set out as Form 5, before the taking of the sample.

Time for taking an intimate sample

17. Where a person consents to the taking of an intimate sample, the police officer shall ensure that the person is taken to a qualified person for the intimate sample to be taken as soon as practicable.

Private communication

18. Where a person communicates with an attorney-at-law, or an adult of his choice under section 14(4)(e), that person is entitled to do so in private, unless the police officer reasonably suspects that the person may attempt to destroy or contaminate an intimate sample.

PART VI

OBTAINING AN INTIMATE SAMPLE BY ORDER OF THE COURT

Order of the court to take sample in certain cases

19. (1) Where a suspect refuses to consent to give an intimate sample, an investigating officer may make an application to the court for an order directing that an intimate sample be taken without his consent.

(2) Where a child or an incapable person is detained, arrested or charged for an offence, no intimate sample shall be taken from that child or that incapable person except by an order of the court.

Form 6

(3) An application for an order under this section shall be in the form set out as Form 6 in the First Schedule.

(4) Where an application is made under this section, an investigating officer shall cause a copy of the application to be served personally on the person from whom the intimate 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.

Consideration for granting an order

20. (1) Where an application is made under section 19, the applicant shall satisfy the court that on the evidence before it there are reasonable grounds to believe that the—

- (a) person against whom the Order is sought is associated with the commission of or committed an offence;

- (b) intimate 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) taking of the intimate 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 of obtaining DNA evidence from an intimate sample against the public interest of upholding the physical integrity of the individual.

(3) In balancing those interests, the court shall consider the following matters:

- (a) 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 health and mental health of the person;
- (d) if the person is a child or an incapable person, the welfare of that person;
- (e) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the person was associated with the commission of or committed the offence;
- (f) the reason, if any, for refusing to consent;
- (g) whether there is a report in relation to a non-intimate or an intimate sample; and
- (h) any other matter considered relevant to balancing those interests.

(4) In considering an application under section 19, the court may take into account any oral or documentary material that the court considers relevant, whether or not it would be admissible.

Order of the court

21. Where the court makes an order directing that an intimate sample is to be taken from a person, the Order shall—

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

Copy of order

22. (1) Where the court makes an order under section 21, a police officer shall give a copy of the Order to—

- (a) the person from whom the intimate sample is to be taken; and
- (b) the qualified person who intends to take the intimate sample.

(2) The police officer shall record the fact that copies of the Order were given under subsection (1), in the DNA Register.

Extension of order of the court

23. (1) Where an order made under section 21 has expired, a police officer may within twenty-four hours after its expiration apply for an extension of the Order.

(2) On an application made under this section, the police officer shall satisfy the court of the reason for not carrying out the Order in the specified time and the reason why the court should grant an extension of the Order.

(3) The court may grant an extension of the Order for such period and on such terms as it thinks fit.

PART VII

SPECIAL CIRCUMSTANCES

24. (1) A qualified person is authorized to take a non-intimate or an intimate sample from a person who is in a prison or other institution to which the Prisons Act applies, at the prison or other institution. Where sample may be taken and by whom
Chap. 13:01

(2) A qualified person is authorized to take a non-intimate or an intimate sample from a person who is detained at a psychiatric hospital in accordance with the Mental Health Act. Chap. 28:02

PART VIII

PROCEDURE FOR TAKING AN INTIMATE AND NON-INTIMATE
SAMPLE

25. Only a qualified person shall take an intimate sample. Who may take an intimate sample

26. (1) A qualified person shall not take an intimate sample unless he receives— Duties of qualified person

- (a) written consent by the person from whom the intimate sample is requested; or
- (b) the Order of the court directing that an intimate sample be taken.

(2) A qualified person shall explain the Order of the court he received under 1(b), to the person from whom the intimate sample is to be taken.

27. (1) Subject to subsection (2), the person who takes the non-intimate or intimate sample shall— Dealing with a DNA sample

- (a) place the sample in a container;
- (b) seal and label the container with an identifying mark;
- (c) place the container in a package;
- (d) seal the package; and

(e) label the package with the same identifying mark that is shown on the label affixed to the container.

(2) Where the sample is blood or urine, the qualified person who takes the sample shall—

(a) immediately ask the person from whom the sample has been taken whether or not he wishes to have a part of the sample for the purpose of having it analyzed on his behalf;

(b) if the person responds in the affirmative to the question in paragraph (a)—

(i) divide the sample into two parts;

(ii) place each part in a separate container;

(iii) seal and affix a label with an identifying mark on the containers;

(iv) place each container in a package; and

(v) give one of the packages immediately to the person from whom the intimate sample was taken or, if that person is in custody any person nominated by that person for that purpose; and

(c) if the person responds in the negative or remains silent to the question in paragraph (a)—

(i) place the intimate sample in a container;

(ii) seal and affix a label with an identifying mark on the container;

(iii) place the container in a package; and

(iv) record the person's response or his silence, in the form set out as Form 7 in the First Schedule; Form 7

(3) A qualified person who takes a non-intimate or intimate sample shall complete the form set out as Form 8 in the First Schedule. Form 8

(4) After the qualified person has sealed and labelled the sample package, he shall give the package immediately to the police officer who shall then sign the form referred to in subsection (3).

28. A qualified person who takes an intimate sample Conditions for taking an intimate sample from a person shall ensure that—

- (a) it is taken in circumstances affording reasonable privacy to the person from whom the sample is being taken;
- (b) it is taken in the presence or view of a person who is of the same sex as the person from whom the sample is being taken;
- (c) it is not taken in the presence or view of a person whose presence is not necessary for the purpose of taking the intimate sample;
- (d) the taking of the sample does not involve the removal of more clothing than is necessary;
- (e) the taking does not involve more visual inspection than is necessary; and
- (f) the procedure is carried out in a manner consistent with appropriate medical or other relevant professional standards.

29. (1) At the time that a request for an intimate Adult to be informed sample is made, a police officer shall inform the person that he is entitled to have an adult of his choice present while the intimate sample is being taken.

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

(3) A police officer shall inform a person that he may waive his right under subsection (1) and the person shall record his waiver in the form set out as Form 9 in the First Schedule.

Form 9

PART IX

POST COLLECTION PROCEDURES

Storage and
delivery of a
package

30. (1) A police officer shall ensure that between the time when he takes a non-intimate sample or collects an intimate sample and the time of delivery to a forensic DNA laboratory, the package containing the sample is properly stored.

(2) The police officer shall deliver the package to a forensic DNA laboratory immediately or as soon as reasonably practicable from the date on which he takes or collects it for the preparation of a report under section 31.

(3) A person who receives the package at a forensic DNA laboratory for analysis, shall ensure that the package is properly sealed, labelled and identifiable both by him and the police officer who delivers the package.

Forensic report

31. (1) A tester shall prepare a forensic report in writing.

(2) The tester shall submit the DNA profile to the Forensic DNA Databank within seven days of preparing the report.

32. (1) Subject to subsection (2), where a sample is not destroyed during forensic DNA analysis, the forensic DNA laboratory shall keep the sample for a period of ten years from the date on which the analysis was completed and thereafter it shall be destroyed. Destruction of non-intimate and intimate samples

(2) Notwithstanding subsection (1), a court may order that a non-intimate or an intimate sample that has been taken under this Act, shall not be destroyed if the court is satisfied that the sample 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 incident.

PART X

FORENSIC DNA LABORATORIES

33. (1) A laboratory shall not conduct forensic DNA analysis unless it has been accredited by an international accrediting body listed in Part A of the Second Schedule and approved by the Minister in accordance with subsection (2). Forensic DNA laboratories

(2) Subject to subsection (3), the Minister shall approve, by Notification, as a forensic DNA laboratory any laboratory which has been accredited by an international accrediting body listed in Part A of the Second Schedule to conduct forensic DNA analysis for the purpose of this Act.

(3) The Trinidad and Tobago Forensic Science Centre shall be deemed to be an approved forensic DNA laboratory for a period of three years after the commencement of this Act.

(4) A forensic DNA laboratory may enter into an agreement with a foreign accredited laboratory listed in Part B of the Second Schedule.

(5) The Minister may by Order extend for a period not exceeding one year, the period for which the Trinidad and Tobago Forensic Science Centre is deemed to be approved.

PART XI
THE DNA BOARD

Establishment and
composition of DNA
Board

34. (1) There shall be a board (hereinafter called “the DNA Board”) whose members shall be appointed by the President.

(2) The DNA Board shall be comprised of not less than three and no more than five members including—

- (a) a forensic scientist with specialization in the discipline of DNA analysis with not less than five years experience;
- (b) a human geneticist with not less than five years experience or a person with similar qualifications, skills or competence; and
- (c) a representative of the Trinidad and Tobago Laboratory Accreditation Service established under regulation 39 of the Standards Regulations, 2004.

L.N. No. 234
of 2004

Functions of DNA
Board

35. The DNA Board shall—

- (a) monitor the accreditation process of any laboratory which seeks accreditation and approval as a forensic DNA laboratory; and
- (b) ensure that all approved forensic DNA laboratories maintain their accreditation status.

Meetings

36. (1) The DNA Board shall convene at least four times in every year after the appointment of its members, so that a period of more than three months shall not intervene between meetings.

(2) A quorum of the Board shall be not less than three members.

Reports

37. (1) The DNA Board shall within one month after the end of each meeting, submit to the Minister, a report on its operations.

(2) The Minister shall cause the reports of the DNA Board to be laid in Parliament twice annually.

38. (1) All members shall hold office for a period of ^{Tenure and termination} three years and shall be eligible for re-appointment.

(2) The President shall terminate the appointment of a member of the DNA Board for inability to discharge the functions of his appointment, whether arising from infirmity of mind or body or any other cause, or for misbehaviour.

39. The remuneration of members of the DNA Board ^{Remuneration} appointed under this Part shall be a charge upon the Consolidated Fund.

40. The DNA Board shall be provided with— ^{Support Staff}

(a) adequate staff; and

(b) funding, as may be appropriated by Parliament,

to assist in the performance of its functions and duties.

PART XII

THE FORENSIC DNA DATABANK

41. There shall be a Forensic DNA Databank which ^{Forensic DNA Databank} shall comprise the following databases:

(a) crime scene database;

(b) volunteer database;

(c) protective services database; and

(d) non-intimate and intimate sample database.

42. (1) There shall be a Custodian of the Forensic ^{Appointment of Custodian} DNA Databank who shall be responsible for receiving and storing all DNA profiles from a forensic DNA laboratory and for carrying out searches against the Forensic DNA Databank.

(2) The President shall appoint the Custodian under subsection (1), from amongst suitably qualified persons on such terms and conditions as he thinks fit.

(3) The remuneration of the Custodian appointed under this section shall be a charge upon the Consolidated Fund.

(4) The Custodian shall be provided with adequate staff to assist in the performance of his functions and duties.

(5) The President shall terminate the appointment of the Custodian where the Custodian—

- (a) is found to be of unsound mind or is incapable of carrying on his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence which brings his office into disrepute;
- (d) is guilty of misconduct in relation to his duties;
- (e) misbehaves in office;
- (f) fails to carry out any of the duties or functions conferred on him under this Act; or
- (g) is incapable, for whatever reason, of performing his duties and functions under this Act.

Functions and duties
of Custodian

43. The Custodian shall—

- (a) maintain the Forensic DNA Databank;
- (b) conduct searches against the forensic DNA Databank; and
- (c) ensure that DNA data is securely stored and remains confidential.

Disclosure by
Custodian

44. (1) Subject to subsection (2), the Custodian shall not disclose any DNA data and where he discloses DNA data, he commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.

(2) Notwithstanding subsection (1), the Custodian shall disclose DNA data to—

- (a) an officer of the First Division, to be used in the course of a criminal investigation or proceeding;
- (b) the person from whom the non-intimate or an intimate sample was taken or his representative and the person from whom a request was made;
- (c) a country making a request, which is accepted by the Central Authority, for mutual assistance in criminal matters;
- (d) a tester making a request for a profile from the protective services database;
- (e) a person who has obtained an Order of the court for disclosure of DNA data; and
- (f) a court of law.

45. (1) The Custodian shall within three months ^{Report} after the end of each calendar year, submit to the Minister, a report of his operations during that year.

(2) The Minister shall cause the report of the Custodian to be laid in Parliament within three months.

PART XIII

MISCELLANEOUS

46. (1) No proceedings, civil or criminal, shall be ^{Immunity} brought against a person in respect of the taking of a non-intimate or an intimate sample 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 non-intimate or an intimate sample.

47. Any question of fact to be determined by a court ^{Standard of proof} 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

48. Without prejudice to section 52, no evidence obtained as a result of an intimate sample taken from a person under this Act shall be inadmissible in any proceedings merely because a person chosen pursuant to section 29 was not present during the taking of the intimate sample, if all reasonable steps have been taken to ensure that the person so chosen was notified—

- (a) that the person from whom the intimate sample was taken wished him to be present during the taking of the intimate sample; and
- (b) of the date on which, and the time and place at which the intimate sample was to be taken.

Persons not compelled

49. Nothing in this Act compels a—

- (a) qualified person to take an intimate sample from a person; or
- (b) person chosen pursuant to section 29 to be present during the taking of an intimate sample.

Offences

50. (1) A person who wilfully and without authorization—

- (a) takes a non-intimate or an intimate sample without consent or an order of the court, as the case may be;
- (b) gives false information as to the existence of a DNA profile in the Forensic DNA Databank;
- (c) discloses or obtains DNA data or DNA profiles;
- (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 non-intimate or an intimate sample;

- (f) adds, deletes or modifies any information in the Forensic DNA Databank;
- (g) falsifies information required under this Act;
- (h) gains or attempts to gain access to the Forensic DNA Databank;
- (i) gains or gives access to a non-intimate or an intimate sample;
- (j) uses a non-intimate or an intimate sample; or
- (k) omits to submit DNA profiles to the Forensic DNA Databank,

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 non-intimate sample or an intimate sample under this Act, impersonates any other person, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.

51. (1) Where, before the coming into force of this Post-conviction forensic analysis Act, a person—

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

he may make a request, in writing, to the Commissioner of Police for forensic DNA analysis.

(2) The forensic DNA analysis shall be carried out where—

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

(b) the person referred to in subsection (1), consents to give a non-intimate or an intimate sample.

(3) On receiving a request under subsection (1), the Commissioner of Police shall respond to the request, in writing, within one month.

Documentary
evidence

52. (1) In any criminal proceedings a 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 person 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.

Regulations

53. (1) The Minister may make regulations for the purpose of giving effect to this Act.

(2) Regulations made under subsection (1) are subject to affirmative resolution of Parliament.

Power to amend
Schedules

54. The Minister may by Order amend the First and Second Schedules.

Act No. 27 of 2000
repealed

55. The Deoxyribonucleic Acid (DNA) Identification Act, 2000 is hereby repealed.

FIRST SCHEDULE

[Section 7(2)]

FORM 1

REPUBLIC OF TRINIDAD AND TOBAGO

NOTIFICATION

PLEASE NOTE that—

- (1) A non-intimate sample is—
 - (a) a sample of hair other than pubic hair;
 - (b) a sample taken from a finger nail or toe nail or from under a finger nail or toe nail;
 - (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
 - (d) saliva; or
 - (e) skin impression.

(2) The reason for taking your non-intimate sample
 is

.....

(3) Your non-intimate sample may be the subject of a search, which means that it may be checked against DNA profiles on the Forensic DNA Databank.

I,
(Name of person)

of
(Address of person giving consent)

have read and understood the above information.

.....
Signature

[Section 8(3)]

FORM 2

REPUBLIC OF TRINIDAD AND TOBAGO

NOTICE is hereby given, in accordance with section 8(1) of the Deoxyribonucleic Acid (DNA) Act, 2007, ("the Act")

that of
(Name)

..... is
(Address)

required to attend the Police Station between the hours of 8 a.m. and 4 p.m. within twenty-four hours from the date of service of this Notice upon you, for the purpose of having a non-intimate DNA sample taken from you. The previous sample taken from you was unsuitable /insufficient for the purpose of obtaining your DNA profile.

TAKE NOTICE that section 8(4) of the Act authorizes a police officer to arrest you without warrant if you fail to comply with this Notice.

.....
Date of Service

.....
Signature of Police Officer

.....
Signature of the above-named

(Section 11)

FORM 3

VOLUNTEERING AN INTIMATE OR NON-INTIMATE
SAMPLE

PLEASE NOTE that—

1. Under section 4 of the Deoxyribonucleic Acid (DNA) Act, 2007—

“intimate sample” means—

- (a) a sample of venous blood;
- (b) a urine sample;
- (c) a sample of semen or other tissue fluid obtained by breaking the skin;
- (d) pubic hair;
- (e) a dental impression; or
- (f) a swab taken from—
 - (i) any part of a person’s genitals; or
 - (ii) a person’s bodily orifice other than the mouth;

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a finger nail or toe nail or from under a finger nail or toe nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva; or
- (e) skin impression.

2. You are not obliged to volunteer your DNA sample.

3. While the consent of the parent or guardian of a child or an incapable person is required before a non-intimate sample or an intimate sample is taken from that child or incapable person, you (the parent or guardian) are not obligated to give your consent.

4. A person, other than an officer of the Protective Services who volunteers his DNA sample is entitled to have an adult of his choice present while an intimate sample is being taken from him by a registered medical practitioner, a nurse, a dentist or a dental auxiliary.

5. The parent or guardian of a child or incapable person shall be present when an intimate sample is being taken.

6. The sample shall be taken in the presence or view of a person who is of the same sex as the person from whom the sample is being taken.

Volunteer /Consent

I,
(Name of Volunteer /Parent /Guardian)

of
(Address)

understand the above notice and I hereby—

[Tick appropriate box]

[] Volunteer to give a non-intimate/an intimate sample to be
(Strike out inapplicable part)

used in the investigation or prosecution of
.....
(Give details of alleged offences)

[] Consent to the taking of a non-intimate sample/an intimate sample from.....
.....
(Name of child or incapable persons)

.....
 who is my child/dependent to be used in the investigation or
 prosecution of
(Give details of alleged offence)

.....

[] Volunteer to give a non-intimate sample. I am required to
 attend
(Give address / location of the crime scene)

in my capacity as a
(Profession / vocation / public office)

in order
(Give details of purpose)

.....

Signed Date
Volunteer

Adult of Choice

[This section is not applicable to children, incapable persons, police officers or other persons who volunteer].

I have been informed of my right to have an adult of my choice present while an intimate sample is being taken and I hereby—

[Tick appropriate box]

[] request the presence of
(Name of adult of choice)

[] waive my right to have an adult of my choice present during the taking of the intimate sample.

[Section 14(4)]

FORM 4

REPUBLIC OF TRINIDAD AND TOBAGO

WAIVER OF RIGHT TO CONSULT BEFORE CONSENT IS GIVEN FOR AN INTIMATE SAMPLE TO BE TAKEN

I, of
(Name)

.....
(Address)

further to a request being made by
(Name of police officer making request)

have been informed of my right to have an attorney-at-law or an adult of my choice present before consenting to the taking of an intimate sample and I hereby waive my right to have an attorney-at-law or an adult of my choice present before consenting to the taking of an intimate sample.

Signed:

.....
(Signature)

.....
(Address)

In the presence of:

.....
(Name in block letters and signature of the Officer of the First Division)

(Sections 15 and 16)

FORM 5

REPUBLIC OF TRINIDAD AND TOBAGO

CONSENT FOR TAKING AN INTIMATE SAMPLE

PLEASE NOTE that—

1. Under section 4 of the Deoxyribonucleic Acid (DNA) Act, 2007—

“intimate sample” means—

- (a) a sample of venous blood;
- (b) a urine sample;
- (c) a sample of semen or other tissue fluid obtained by breaking the skin;
- (d) pubic hair;
- (e) a dental impression; or
- (f) a swab taken from—
 - (i) any part of a person’s genitals; or
 - (ii) a person’s bodily orifice other than the mouth.

2. There are reasonable grounds for believing that you may have committed the offence of and you are being requested to consent to the taking of an intimate sample.

3. There are reasonable grounds for believing that the DNA forensic analysis of the intimate sample, would tend to confirm or disprove your involvement in or association with the commission of the offence.

4. You are under no obligation to consent to an intimate sample being taken.

5. If you are to consent to an intimate sample being taken, such consent must be in writing in the presence of both the police officer from whom the request for the intimate sample was made and the police officer from whom authorization was given to make the request for the intimate sample.

6. If you give consent for an intimate sample to be taken, you may at any time before the sample is taken, withdraw that consent.

7. You have the right to consult with and have present an attorney-at-law, or an adult of your choice before you consent to give an intimate sample.

8. You may waive your right to withdraw your consent and such waiver must be recorded in the presence of the police officer from whom the request for the intimate sample was made and the police officer from whom authorization was given to make the request for the intimate sample and yourself.

9. You have two hours from the time the request is made to decide whether or not you want an intimate sample taken and if you have not given your consent within that period, you will be deemed to have refused to give your consent.

10. Any intimate sample given or taken will be analyzed and may be used as evidence in a criminal investigation or prosecution.

11. A DNA profile obtained from your intimate sample may be checked against other DNA profiles in the Forensic DNA Databank.

12. You are entitled to have an adult of your choice present while the intimate sample is being taken.

13. Only a qualified person is entitled to take an intimate sample from you.

A “qualified person” means—

(a) a registered medical practitioner under the Medical Board Act, 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; or

(b) where the sample is a dental impression—

(i) a dentist; or

(ii) a dental auxiliary acting under supervision of dentist,

registered under the Dental Profession Act.

14. Where an intimate sample is taken—

(a) it shall be taken in circumstances affording reasonable privacy to you;

at
(Place where consent is given)

and before me:

.....
(Name in block letters and signature of the police officer authorizing the request)

at
(Place where consent is given)

B. Withdrawal of Consent

I, of
(Name of person withdrawing consent)

.....
(Address of person withdrawing consent)

further to giving my consent for an intimate sample to be taken,
hereby withdraw my consent to the taking of an intimate sample.
The reasons for withdrawing my consent are as follows:

.....
.....

Signed:

..... (Signature of person withdrawing consent) (Place where consent was withdrawn)

In the presence of:

.....
(Name and rank in block letters and signature of police officer requesting consent)

at

and before me:

.....
(Name in block letters and signature of the police officer authorizing the request)

at
(Place where consent was withdrawn)

[Section 19(3)]

FORM 6

REPUBLIC OF TRINIDAD AND TOBAGO

APPLICATION FOR AN ORDER THAT AN INTIMATE SAMPLE BE TAKEN

WHEREAS the information of
(Name and rank of Police Officer)

who says on oath that he made a request of the suspect
.....
(Name and address)

to give an intimate sample, in relation to an investigation.

AND WHEREAS such request was denied by the suspect on
(Date)

Now, I,
having reasonable grounds to believe that the suspect was associated with

the commission of the offence of
and that the taking of an intimate sample from the suspect is likely to produce evidence tending to confirm or disprove his/her involvement in the offence.

Particulars of allegation of suspect's involvement in the commission of the offence

.....
.....
.....
.....
.....
.....
.....
.....

.....

.....

.....
(Signature of Police Officer)

.....
(Signature of the Officer of the First Division)

Pursuant to section 19 of the Deoxyribonucleic Acid (DNA) Act I request that this Honourable Court in accordance with section 21 of the DNA Act, make an order that the taking of the intimate sample is justified in the circumstances and that the sample be taken in accordance with the provisions of the Deoxyribonucleic Acid (DNA) Act.

[Section 27(2)]

FORM 7

REPUBLIC OF TRINIDAD AND TOBAGO

RECORD OF PERSON'S RESPONSE TO A REQUEST FOR PART OF SAMPLE

I have asked if he
(Name of person from whom sample is taken)

wished to have a part of the DNA sample for the purpose of having it analyzed on his own behalf and he has—

[] responded in the negative;

[] not given any response.

(Tick where applicable)

.....
.....
.....
(Name in block letters, signature and profession of qualified person taking the intimate sample)

.....
.....
.....
(Name in block letters and signature of person from whom sample is taken)

.....
(Date and place where sample taken)

[Section 27(3)]

FORM 8

REPUBLIC OF TRINIDAD AND TOBAGO

RECORD OF TAKING OF NON-INTIMATE OR INTIMATE
SAMPLE BY

A QUALIFIED PERSON

Name:

Address:

Date of birth:

Gender of the person from whom the intimate sample is taken:

Type of sample: Non-intimate/Intimate

Date taken:

Time and place of taking of the sample:

.....

A statement that both the container and the package holding the
sample are labelled and sealed:

.....

The information on the label affixed to the container and the label
affixed to the package:

.....

.....

The nature of the sample:

Name:

Rank and regimental number of the police officer collecting the

DNA package:

The name and signature of the person taking the intimate sample:

.....

[Section 29(3)]

FORM 9

REPUBLIC OF TRINIDAD AND TOBAGO

WAIVER OF RIGHT TO HAVE AN ADULT OF YOUR CHOICE PRESENT AT THE TAKING OF AN INTIMATE SAMPLE

I, (Name)

of (Address)

further to being informed by

....., of my (Name and number of police officer)

right to have an adult of my choice present during the taking of an intimate sample, hereby waive this right to have an adult of my choice present during the taking of the intimate sample.

Signed:

..... (Signature of person from whom the intimate sample is to be taken)

..... (Place where consent is given)

In the presence of:

..... (Name in block letters and signature of the police officer of the First Division)

at (Place where consent is given)

SECOND SCHEDULE

[Section 33(1) and (4)]

PART A

INTERNATIONAL ACCREDITING BODIES

1. The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)
2. Forensic Quality Services — International (FQS-I)
3. The Standards Council of Canada (SCC)
4. The United Kingdom Accreditation Service (UKAS)

PART B

FOREIGN ACCREDITED LABORATORIES

1. Broward County Sheriff's Office Crime Laboratory, Ft. Lauderdale, Florida, U.S.A.
2. Florida Department of Law Enforcement, Orlando Regional Crime Laboratory, Orlando, Florida, U.S.A.
3. Federal Bureau of Investigation (FBI) Laboratory, Washington D.C, U.S.A.
4. Miami-Dade Police Department, Miami, Florida, U.S.A.
5. The Bode Technology Group Inc., Virginia, U.S.A.
6. Genetica DNA Laboratories Inc., Ohio, U.S.A.
7. ReliaGene Technologies Inc., Louisiana, U.S.A.
8. Centre of Forensic Science, Ministry of Public Safety and Security, Toronto, Canada
9. Centre of Forensic Sciences, Northern Regional Laboratory, Sault Ste. Marie, Ontario, Canada
10. Royal Canadian Mounted Police (RCMP) Forensic Laboratory Services, Canada
11. Orchid Cellmark Inc. U.S.A.
12. Forensic DNA Services Limited, United Kingdom
13. LGC Limited, United Kingdom
14. Orchid Cellmark Limited, United Kingdom
15. The Forensic Science Service, United Kingdom

Passed in the House of Representatives this 30th day of August, 2007.

N. JAGGASSAR
Acting Clerk of the House

It is hereby certified that this Act is one 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 24 members of the House.

N. JAGGASSAR
Acting Clerk of the House

Passed in the Senate this 11th day of September, 2007.

J. SANDY
Acting Clerk of the Senate

It is hereby certified that this Act is one 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 30 members of the Senate.

J. SANDY
Acting Clerk of the Senate