

OBJECTS AND REASONS

This Bill makes provision for

- (a) the procedure required for the carrying out of forensic services including DNA forensic analyses;
- (b) the use of DNA identification services and the administration of a DNA database;
- (c) the altering of section 13 of the Constitution, to the extent necessary to best ensure the attainment of the purposes specified in paragraphs (a) and (b); and
- (d) matters related or incidental thereto.

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BARBADOS

A Bill entitled

An Act to make provision for

- (a) the procedure required for the carrying out of forensic services including DNA forensic analyses;
- (b) the use of DNA identification services and the administration of a DNA database;
- (c) the altering of section 13 of the Constitution, to the extent necessary to best ensure the attainment of the purposes specified in paragraphs (a) and (b); and
- (d) matters related or incidental thereto.

ENACTED by the Parliament of Barbados as in accordance with section 49 of the *Constitution* as follows:

PART I

INTERPRETATION

- Short title. 1. This Act may be cited as the *Forensic Procedures and DNA Identification Act, 2005*.
- Interpretation. 2. (1) In this Act,
"authorised person" in respect of the carrying out of a forensic procedure means
- Cap. 371. (a) a medical practitioner within the meaning of the *Medical Registration Act*;
- Cap. 367. (b) a "dental practitioner" or "dentist" within the meaning of the *Dental Registration Act*;
- (c) a forensic scientist attached to the Forensic Sciences Centre; or
- (d) a person who is a suitably qualified person approved by the Minister to carry out the procedure;
- "authorised applicant", in respect of the carrying out of a forensic procedure relating to an offence, means
- (a) the investigating police officer;
- (b) a police officer of the rank of inspector or of a higher rank; or
- (c) the Director of Public Prosecutions;
- "qualified scientist" means a scientist other than a forensic scientist who is engaged or employed by the Forensic Services Centre as a scientist and who is authorised by the Director for the purposes of this Act;
- "child" means a person under 18 years old;
- "Commissioner" means the Commissioner of Police;

"Court" means the High Court;

"Director" means the Director of the Forensic Sciences Centre;

"DNA" means deoxyribonucleic acid;

"DNA data base system" means the system defined as such under section 64;

"forensic material" means

- (a) any of the following taken of or from a person's body:
 - (i) a sample of any kind;
 - (ii) a handprint, fingerprint, footprint or toeprint;
 - (iii) a photograph or video recording; or
 - (iv) a cast or impression;
- (b) any relevant material found at or taken from the scene of a crime; and
- (c) any other material used for scientific investigation in respect of a crime;

"forensic procedure" means both an intimate and a non-intimate forensic procedure as defined under this section;

"forensic scientist" means a person who has obtained the requisite qualifications in the field of forensic science and is recognised as such;

"incapable person" means

- (a) an adult who is by reason of a mental disorder is incapable of
 - (i) understanding the general nature and effect of and purposes of carrying out a forensic procedure; or
 - (ii) indicating whether he consents or does not consent to a forensic procedure being carried out; or
- (b) a child;

"intimate forensic procedure" means, except under Part VI, any of the following forensic procedures:

- (a) an external examination of the genital or anal area, the buttocks, or, in the case of a female, the breasts;
- (b) the taking of a sample of blood;
- (c) the taking of a sample of pubic hair;
- (d) the taking of a sample by swab or washing from any of the areas referred to in paragraph (a);
- (e) the taking of a sample by vacuum suction, by scraping or by lifting by tape from any of the areas referred to in paragraph (a);
- (f) the taking of a dental impression; or
- (g) the taking of a photograph of, or an impression or cast of a wound from any of the areas referred to in paragraph (a);

"investigating officer" means a police officer in charge of the investigation of the commission of the offence in relation to which a forensic procedure is carried out or proposed to be carried out;

Cap. 371. "medical practitioner" means a registered medical practitioner within the meaning of the *Medical Registration Act*;

Cap. 45. "mental disorder" has the meaning assigned to it by section 2 of the *Mental Health Act*;

"non-intimate forensic procedure" means, except under Part VI, any of the following forensic procedures:

- (a) an examination of a part of the body, other than the areas referred to in paragraph (a) of the definition "intimate forensic procedure";
- (b) the taking of a sample of hair, other than pubic hair;
- (c) the taking of a sample from a nail or under a nail;

- (d) the taking of a sample of saliva or a sample by buccal swab;
- (e) the taking of a sample by swab or washing from any external part of the body other than the areas of the body referred to in paragraph (a);
- (f) the taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body, other than the area of the body referred to in paragraph (a);
- (g) the taking of a handprint, fingerprint, footprint or toeprint; or
- (h) the taking of a photograph of, or an impression or cast of a wound from a part of the body other than the areas of the body referred to in paragraph (a);

"parent" includes a guardian or other person who has parental responsibility for a child;

"parental responsibility for a child" refers to all the duties, powers, responsibilities and authority parents have by law in relation to their children;

"serious offence" means

- (a) an indictable offence including an offence under the *Road Traffic Act* that is punishable on indictment; or Cap. 295.
- (b) an offence punishable by a term of more than 3 years imprisonment.

"suspect" means any of the following persons:

- (a) a person suspected by a police officer, on reasonable grounds, to have committed an offence;

- (b) a person charged with an offence; and
- (c) a person who has been summoned to appear before a Court for an offence.

(2) A reference in this Act to the term "volunteer" in relation to a forensic procedure is a reference to a person

- (a) who volunteers to an investigating officer to undergo the procedure; or
- (b) where the person is an incapable person whose parent or guardian volunteers to an investigating officer on behalf of the incapable person, that the incapable person undergo the procedure.

PART II

FORENSIC PROCEDURES BY CONSENT

Forensic procedure may be carried out with informed consent of suspect.

3. (1) Subject to this Part, a suspect referred to under section 5 other than an incapable person may give his informed consent to the conduct of a forensic procedure in accordance with that section.

(2) An authorised person may carry out a forensic procedure on a suspect under this Part where the informed consent of the suspect has been obtained.

(3) An authorised person referred to under subsection (2), shall carry out the forensic procedure in accordance with Part V.

Persons who cannot consent to forensic procedures.

4. An incapable person cannot consent to the carrying out of a forensic procedure.

Informed consent of suspect to forensic procedure.

5. (1) A suspect may give informed consent to the conduct of a forensic procedure under section 3(1) by giving that consent in writing after a police officer

- (a) informs the suspect about the procedure in accordance with section 7;
- (b) gives the suspect the opportunity to communicate with an attorney-at-law of the suspect's choice before requesting consent to the procedure; and
- (c) requests the suspect to consent to the procedure having been satisfied of the matters specified in section 6;

(2) The police officer referred to under subsection (1) shall allow the suspect to communicate with his attorney-at-law in private unless the officer suspects on reasonable grounds that the suspect might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.

6. (1) Where a police officer referred to under section 5 is satisfied on reasonable grounds that

- (a) the person on whom the forensic procedure is proposed to be carried out is a suspect;
- (b) the offence in relation to which the person is a suspect is a serious offence and there are reasonable grounds to believe that the procedure is likely to produce evidence tending to confirm or disprove that the suspect committed that offence;
- (c) the person on whom the procedure is proposed to be carried out is not an incapable person; and
- (d) the request for consent to carry out the procedure is justified in all the circumstances,

Matters to be considered by police officer before requesting consent.

the police officer shall, subject to section 7, request the consent of the suspect to carry out the procedure.

(2) In deciding whether a request given under subsection (1) is justified in all the circumstances, the police officer shall balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned, against the public interest in protecting the rights of the suspect.

(3) In balancing the interests referred to in subsection (2), a 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 alleged participation by the suspect in the commission of the offence;
- (c) the age, physical and mental health of the suspect, to the extent that they are known to the police officer;
- (d) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the suspect committed the offence;
- (e) where the suspect gives any reasons for refusing to consent, the reasons; and
- (f) any other matter that may be considered relevant to the balancing of those interests.

Matters that suspect shall be informed of before giving consent.

7. (1) A police officer shall inform a suspect on whom a forensic procedure is proposed to be carried out, of the following matters before requesting the consent of the suspect:

- (a) the fact that the person is a suspect in the offence in relation to which the police officer wishes that procedure carried out;

- (b) that the suspect may refuse to consent to the carrying out of the procedure;
- (c) that the giving of information under this section, and the giving of consent, if any, by the suspect, will be recorded in writing, and that the suspect has a right to a copy of that record;
- (d) the purpose for which the procedure is required;
- (e) the way in which the procedure is to be carried out;
- (f) that the procedure may produce evidence against the suspect that might be used in a Court of law;
- (g) that the procedure will be carried out by an authorised person;
- (h) if relevant, the matters mentioned in subsection (2) or (3);
- (i) the consequences of not consenting, as mentioned in subsection (4) or (5), whichever is applicable;
- (j) the effect of section 57; and
- (k) that information obtained from the analysis of forensic material may be placed on the DNA database system and the rules that will apply to its disclosure and use under this Act.

(2) A police officer shall inform a suspect that the suspect may request a medical practitioner of his choice to be present while an intimate forensic procedure is being carried out.

(3) Where the forensic procedure is the taking of a dental impression, the police officer shall inform the suspect that the suspect may request a dental practitioner of his choice to be present while the procedure is being carried out.

(4) Where the suspect is in custody and the forensic procedure is

(a) a non-intimate forensic procedure, a police officer of the rank of an inspector or of a higher rank, shall inform the suspect that, if the suspect does not consent, the officer may order the carrying out of the procedure under Part III, where the officer is satisfied that the suspect has been informed of the matters mentioned in section 7; and

(b) an intimate forensic procedure, the police officer referred to in paragraph (a) shall inform the suspect that, if the suspect does not consent, an application may be made to a magistrate for an order authorising the carrying out of the procedure.

(5) Where the suspect is not in custody, the police officer referred to in paragraph (a) shall inform the suspect that, if the suspect does not consent, an application may be made to a magistrate for an order authorising the carrying out of the forensic procedure.

Withdrawal
of suspect's
consent.

8. Where a suspect expressly withdraws consent either orally or in writing to the carrying out of a forensic procedure under this Act,

(a) from the time of the withdrawal, the procedure shall be treated as a forensic procedure for which consent has been refused; and

(b) the procedure may be carried out only in accordance with an order under Part III or Part IV as the case may be.

- 9.** A police officer shall ensure that
- (a) the giving of the information about the proposed forensic procedure and the suspect's consent or other responses, if any, are recorded in writing, and if practicable, by audiotape, videotape or other electronic means; and
 - (b) a copy of the record referred to in paragraph (a), is made available to the suspect.

Recording of giving of information and consent.

PART III

NON-INTIMATE FORENSIC PROCEDURES BY ORDER OF A POLICE OFFICER

- 10.** Subject to this Part, an authorised person may by order of a police officer of the rank of inspector or of a higher rank, carry out a non-intimate forensic procedure on a suspect in custody in accordance with Part V.

Non-intimate forensic procedures on suspect by order of a police officer.

- 11.** An order referred to in section 10 may be made where
- (a) the suspect has been asked to consent to the carrying out of the forensic procedure in accordance with the provisions of Part II;
 - (b) the suspect has not consented; and
 - (c) the police officer is satisfied on reasonable grounds of the matters referred to in section 12.

Circumstances in which a police officer may order non-intimate forensic procedure.

- 12.** (1) A police officer referred to in section 10 shall be satisfied on reasonable grounds that
- (a) the suspect is in lawful custody; and
 - (b) the circumstances specified in paragraphs (b), (c) and (d) of section 6(1) apply.

Matters to be considered by police officer before ordering forensic procedure.

(2) In deciding whether the carrying out of the forensic procedure without consent is justified in all the circumstances, the police officer shall

- (a) balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in protecting the rights of the suspect; and
- (b) in balancing those interests, have regard to the matters referred to in section 6(3).

Record of
police
officer's
order.

13. Where an order has been made by a police officer under section 10, that officer shall within 24 hours of making the order,

- (a) make a record of
 - (i) the order;
 - (ii) the date and time the order was made; and
 - (iii) the reasons for making it;
- (b) sign the record; and
- (c) ensure that a copy of the record is made available to the suspect as soon as practicable thereafter.

PART IV

**FORENSIC PROCEDURES BY
ORDER OF A MAGISTRATE***General*

14. An authorised person may carry out a forensic procedure on a suspect by order of a magistrate under this Part in accordance with the procedure specified in Part III.

Forensic procedure may be carried out by order of a magistrate.

15. (1) A magistrate may, upon an application made in accordance with section 16 or 23 order the carrying out of a forensic procedure on a suspect where the suspect is

Application for and granting of order by magistrate.

- (a) not in custody and has not consented to the procedure;
- (b) in custody, has been requested to consent to an intimate forensic procedure and has not consented to the procedure; or
- (c) an incapable person.

(2) An application for an order referred to under subsection (1) shall

- (a) be made in writing;
- (b) be supported by evidence on oath or by affidavit concerning the matters mentioned in section 6;
- (c) state the type of forensic procedure sought to be carried out; and
- (d) be made in the presence of the suspect, subject to any order to the contrary made by the magistrate.

Final orders

Final order
for carrying
out of
forensic
procedure.

16. A magistrate may order the carrying out of a forensic procedure on a suspect where

- (a) section 15 applies; and
- (b) the magistrate is satisfied as required by section 17.

Matters to
be
considered
by
magistrate.

17. (1) Where an application under section 15(2) has been made to a magistrate, the magistrate shall be satisfied on a balance of probabilities that

- (a) the person on whom the forensic procedure is proposed to be carried out is a suspect;
- (b) where the forensic procedure is a procedure other than the taking of the handprint, fingerprint, footprint or toeprint, the offence for which the person is a suspect is a serious offence and on the evidence before the magistrate, there are reasonable grounds to believe that the suspect committed
 - (i) that offence;
 - (ii) another serious offence arising out of the same circumstances surrounding that offence; or
 - (iii) another serious offence for which the evidence likely to be obtained by the carrying out the procedure on the suspect is likely to have probative value;
- (c) where the forensic procedure is the taking of a handprint, fingerprint, footprint or toeprint, the offence for which the person is a suspect is an offence triable on indictment and, on the evidence before the magistrate, there are reasonable grounds to believe that the suspect committed

- (i) that offence;
 - (ii) another offence triable on indictment arising out of the same circumstances surrounding that offence; or
 - (iii) another offence triable on indictment for which the handprints, fingerprints or toeprints are likely to have probative value; and
- (d) the carrying out of the forensic procedure is justified in all the circumstances.

(2) In deciding whether the carrying out of the forensic procedure is justified in all the circumstances, the magistrate shall balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in protecting the rights of the suspect.

(3) In balancing the interests referred to in subsection (2), the magistrate 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 alleged participation of the suspect in the commission of the offence;
- (c) the age, physical and mental health of the suspect, to the extent that they are known to the magistrate;
- (d) where the suspect is an incapable person, the best interests of the suspect;
- (e) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the suspect committed the offence;

- (f) where the suspect gives any reasons for refusing to consent, the reasons;
- (g) where the suspect is in lawful custody,
 - (i) the period for which the suspect has already been detained; and
 - (ii) the reasons for any delay in proposing the carrying out of the procedure; and
- (h) any other matter considered relevant to balancing those interests.

Securing the presence of the suspect who is in custody at the hearing.

- 18.** (1) A magistrate may, on the application of a police officer,
- (a) where a suspect is in police custody or is otherwise in lawful detention, issue a warrant directing the person holding the suspect to deliver the suspect into the custody of the police officer for the hearing of an application for an order under this Part;
 - (b) where a suspect is not in custody,
 - (i) issue a summons for the appearance of the suspect at the hearing of the application; or
 - (ii) issue a warrant for the arrest of the suspect to bring the suspect before the magistrate for the hearing of the application.
- (2) The magistrate may issue a warrant under paragraph (b)(ii) of subsection (1) where the magistrate is satisfied that
- (a) the arrest is necessary to ensure the appearance of the suspect at the hearing of the application;
 - (b) the suspect may destroy evidence that may be obtained by carrying out the forensic procedure; or

(c) the issue of the warrant is otherwise justified.

19. (1) The hearing of an application for an order under this Part shall be conducted in the presence of the suspect concerned. Procedure at hearing of application for order.

(2) A suspect may be represented by an attorney-at-law and in the case where a suspect is an incapable person, the suspect shall be represented by an adult person of his choice and may also be represented by an attorney-at-law.

(3) The suspect referred to in subsection (2) or a representative of the suspect may, with the leave of the magistrate, call or cross-examine witnesses.

(4) Leave referred to in subsection (3) may be granted only where the magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.

20. (1) Where a magistrate is satisfied that the carrying out of a forensic procedure is justified in the circumstances, the magistrate may make an order in the presence of the suspect, for the carrying out of the procedure. Action to be taken on making of order.

(2) In making an order under subsection (1), the magistrate shall

(a) give reasons for making the order;

(b) ensure that a written record of the order is kept; and

(c) inform the suspect that reasonable force may be used to ensure that the suspect complies with the order.

(3) The magistrate may give directions about the date, time, place where, or how a forensic procedure is to be carried out.

Suspect may be kept in custody for the carrying out of forensic procedure.

21. (1) Where a magistrate orders the carrying out of a forensic procedure on a suspect, the suspect may be detained in custody for as long as is reasonably necessary to carry out the procedure.

(2) The police officer who has custody of a suspect for the purposes of ensuring his attendance at a hearing referred to in section 18(1), shall return the suspect to the place of the original custody referred to in subsection (1) without delay

- (a) where the application for the order is refused; or
- (b) where the order is made, after the forensic procedure referred to in subsection (1) has been completed.

Interim orders

Interim order for immediate carrying out of forensic procedure.

22. (1) Where any of the circumstances set out in section 15 exists, and upon an application made in accordance with section 24 a magistrate is satisfied that

- (a) the probative value of evidence obtained because of the forensic procedure concerned, is likely to be lost or destroyed if there is delay in carrying out the procedure; and
- (b) there is sufficient evidence to indicate that the magistrate is reasonably likely to be satisfied of the existence of the matters mentioned in section 17(1) when the application is finally decided,

the magistrate may make an interim order authorising the immediate carrying out of a forensic procedure on a suspect.

- (2) An interim order referred to in subsection (1)
 - (a) authorises
 - (i) the taking of an intimate or non-intimate sample,
 - (ii) the analysis of the sample where the sample is likely to perish before a final order is made;
 - (b) has full effect until a magistrate, at a hearing mentioned in section 25(2), confirms the interim order or disallows it,

but the results of any analysis or finding shall not be admissible as evidence unless a final order, confirming the interim order has been made.

(3) A hearing to confirm or disallow an interim order shall be held within 14 days of the date of the interim order.

(4) When an interim order has not been confirmed within 14 days of the order being made, every sample, analysis, finding or report resulting from the making of the order shall be destroyed in accordance with Part IX.

23. (1) An authorised applicant may make an application to the magistrate seeking an interim order authorising the immediate carrying out of a forensic procedure on the suspect. Applications for interim order.

- (2) An application for an interim order
 - (a) shall be supported by evidence on oath or by affidavit in respect of the matters mentioned in section 22(1); and
 - (b) shall state the type of forensic procedure sought to be carried out.

(3) An application under subsection (1) may be made in person or, where it is not practicable to do so, by telephone, telex, facsimile or other means of communication.

(4) An application shall not be made unless

(a) the suspect is in the presence of the authorised applicant when the application is made;

(b) subject to subsection (5), where the suspect is an incapable person, an adult or attorney-at-law representing the incapable person is also present when the application is made.

(5) The presence of an adult representing an incapable person at the making of an application may be disallowed where the adult unreasonably interferes with or obstructs the making of the application.

Procedure at hearing of application of interim order.

24. Where the application referred to under section 23(3) is made by telephone, facsimile or other means of communication, the magistrate shall ensure that the suspect, adult and attorney-at-law are given an opportunity to make a written submission to accompany the application, or to speak to the magistrate by telephone or other form of oral communication.

Action to be taken on making of interim order.

25. (1) A magistrate who makes an interim order under this Part shall inform the applicant of the order personally, or by telephone, telex, facsimile or other means of communication.

(2) An interim order shall state the date and time when, and place where, a further hearing on the application will take place; and the application shall be finally decided by the making of an order confirming or disallowing the interim order within the time specified in section 22(3).

(3) A magistrate may make an order and give such directions in relation to an interim order as a magistrate may make or give in relation to an order under section 16.

26. (1) An applicant for an interim order shall at the time of, or as soon as practicable after applying for the interim order, make a record, in this Part referred to as the applicant's record, of the

Record of application and interim order.

- (a) application,
- (b) grounds for seeking the order,
- (c) date and time when the order was made,
- (d) order made, and
- (e) name of the magistrate who heard the application.

(2) The magistrate shall at the time of, or as soon as practicable after making an interim order, send a copy of that order to the applicant.

27. (1) A police officer may, while awaiting the decision on an application seeking an interim order, use such reasonable force as is necessary to prevent the suspect from destroying any evidence that might be obtained by carrying out the forensic procedure if the order is made.

Suspect may be prevented from destroying or contaminating evidence.

(2) This section does not authorise anyone to carry out a forensic procedure before an interim order is made.

28. Where a sample taken under an interim order is analysed pursuant to section 22(2), a person who conducts the analysis shall not intentionally or recklessly disclose the results of the analysis to anyone

Results of forensic procedure carried out under interim order.

- (a) during the period before a final order is made; or
- (b) where the interim order is disallowed.

*Reports of proceedings under this Part*Restrictions
on
publications.

- 29.** (1) No person shall
- (a) disclose any information obtained under this Part except in accordance with this Part;
 - (b) publish any report of a proceeding under this Part unless the suspect has been charged with the relevant offence and the publication is in accordance with this Act or Regulations made under this Act.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on indictment to a fine of \$10 000 or to imprisonment for a term of 18 months.

PART V

CARRYING OUT FORENSIC PROCEDURES*General provisions*General
rules for
carrying out
forensic
procedures.

30. A forensic procedure referred to under this Act shall be carried out

- (a) in a manner consistent with appropriate medical and other relevant standards;
- (b) in accordance with
 - (i) the general rules set out in the *First Schedule*; and
 - (ii) international standards and guidelines; and
- (c) where the suspect is not under arrest, as soon as it is practicable after the suspect presents himself to the police officer; or

First
Schedule

- (d) where the suspect is under arrest, as soon as it is practicable after the end of the period of investigation.

31. An authorised person or a police officer who is authorised to carry out a forensic procedure on a person, may use such reasonable force as is necessary

Use of force in carrying out forensic procedure.

- (a) to enable that procedure to be carried out; or
(b) to prevent loss, destruction or contamination of any sample.

32. (1) This Act does not authorise the carrying out of a forensic procedure in a cruel, inhuman or degrading way.

Forensic procedure not to be carried out in cruel, inhuman or degrading way.

(2) For the purposes of this section, the carrying out of a forensic procedure in accordance with this Act is not in itself to be regarded as degrading to the suspect.

33. An order made by a police officer or a magistrate authorising the carrying out of a forensic procedure authorises the person who is to carry out the procedure in accordance with the Act to seek assistance from another person to carry out the procedure; and authorises the other person to give that assistance in accordance with the rules set out in the *First Schedule*.

Person may get help to carry out forensic procedure.

First Schedule

34. Where material from a sample taken from a suspect is analysed for the purposes of an investigation into the commission of an offence by the suspect, the investigating police officer shall ensure that a copy of the results of the analysis is made available to the suspect at least 14 days prior to the production of evidence in any prosecution of the offence.

Procedure after forensic procedure is carried out.

PART VI

**CARRYING OUT OF CERTAIN FORENSIC
PROCEDURES AFTER CONVICTION OF
SERIOUS OFFENDERS**

Forensic
procedures
to which this
Part applies.

35. In this Part,

- (a) "intimate forensic procedure" applies only to an intimate forensic procedure that consists of the taking of a sample of blood; and
- (b) "non-intimate forensic procedure" applies only to the following non-intimate forensic procedures:
 - (i) samples of hair other than pubic hair;
 - (ii) a buccal swab; and
 - (iii) fingerprints;
- (c) "police officer" means a police officer who is an authorized person under section 36;
- (d) "serious offender" means a person who has been convicted of a serious offence.

Non-
intimate
forensic
procedures
authorised to
be carried
out.

36. An authorised person may carry out a non-intimate forensic procedure referred to in section 35, on

- (a) a serious offender other than an incapable person,
 - (i) with the informed consent of the serious offender; or
 - (ii) by order of a magistrate under Part IV; and
- (b) the serious offender who is an incapable person, by order of a magistrate under Part IV.

37. An authorised person may carry out an intimate forensic procedure, referred to in section 35, on a serious offender other than an incapable person

Intimate forensic procedures authorised to be carried out.

- (a) with the informed consent of the serious offender; or
- (b) by order of a magistrate under Part IV.

38. (1) Subject to this Part, Part V applies to the carrying out of a forensic procedure on a serious offender under this Part as if a reference to a suspect in Part V were a reference to a serious offender.

Application of Part V to carrying out of forensic procedures to which Part VI applies.

(2) An authorised person may, pursuant to section 36 or 37, carry out a forensic procedure under this Part only in accordance with Part V as applied by this section.

39. (1) An authorised person shall not carry out a forensic procedure on a serious offender under this Part if the serious offender is a suspect or a volunteer in respect of the offence for which the procedure is being sought.

Scope of authorisation.

(2) Where a serious offender is a suspect or a volunteer, a forensic procedure may be carried out on the offender in accordance with the relevant provisions of Parts II, III or IV as the case may be.

40. (1) A police officer may at the time of the sentencing by the Court of a serious offender or at a later time, apply to the Court for an order

Court Order for carrying out of forensic procedure on serious offender.

- (a) directing that the offender consent to an intimate forensic procedure to which this Part applies, being carried out on the offender; or
- (b) for the carrying out of a non-intimate forensic procedure to which this Part applies on the offender where the offender is an incapable person.

(2) A Court may order the carrying out of a forensic procedure under this Part where it is satisfied that to do so is justified in all the circumstances, after taking into account the seriousness of the circumstances surrounding the commission of the offence.

(3) An order under this section takes effect immediately.

Informed consent of serious offender to forensic procedure.

41. (1) A serious offender gives informed consent to a forensic procedure where that offender consents after a police officer

- (a) requests the offender to consent to the procedure under section 42;
- (b) informs the offender about the procedure in accordance with the *Second Schedule*; and
- (c) gives the offender an opportunity to communicate with an attorney-at-law of the offender's choice.

Second Schedule

(2) The police officer referred to under section 41 shall give the serious offender the opportunity to communicate, with his attorney-at-law in private unless the officer suspects on reasonable grounds, that the offender is likely to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.

Circumstances in which police officer may request serious offender to consent to forensic procedure.

42. A police officer referred to under section 41 may order the carrying out of a non-intimate forensic procedure on a serious offender where

- (a) the offender has been asked under section 41 to consent to the carrying out of the procedure;
- (b) the offender has not consented; and
- (c) the officer has taken into account the matters set out in section 43.

43. In deciding whether to order the carrying out of a forensic procedure under section 42, the police officer shall take into account the following: Matters to be considered by police officer.

- (a) whether this Act authorises the procedure to be carried out in the absence of the order;
- (b) the seriousness of the circumstances surrounding the serious offence committed by the offender; and
- (c) whether the carrying out of the procedure without consent is justified in all the circumstances.

44. A police officer shall ensure that the giving of information about the proposed forensic procedure and the responses of the serious offender if any, are recorded in writing and also, if practical, by audiotape, videotape or other electronic means; and that a copy of the record is made available to the offender. Recording of giving of information and consent.

45. Where a police officer orders the carrying out of a non-intimate forensic procedure on a serious offender, the provisions of paragraphs (a) and (b) of section 13 apply in respect of that order. Record of police officer's order.

- 46.** (1) Where a Court orders a serious offender who Carrying out of forensic procedure following conviction.
- (a) is in prison; or
 - (b) in another place of detention

to permit a forensic procedure to be carried out, the Court may also order that a police officer, together with any other person who, is authorised to carry out the procedure under Part V as applied by section 38, be permitted to attend on the offender in the prison or place of detention to allow the procedure to be carried out.

(2) Where a Court orders a serious offender who

(a) is not in a prison;

(b) is in another place of detention,

to permit a forensic procedure to be carried out, the Court may order the offender to attend at a police station, or other place ordered by the Court, within such period as the Court specifies, to allow the procedure to be carried out.

(3) Where an order is made under this section, the offender shall comply with the Order.

(4) A serious offender who fails to comply with an order made under this section, is guilty of an offence and is liable on summary conviction to imprisonment for a term of 3 years.

Analysis of
forensic
material
under this
Part.

47. The person who conducts an analysis of any forensic material obtained because of carrying out the forensic procedure on a serious offender under this Part shall not disclose the results of the analysis

(a) until the expiry of the period allowed for an appeal; or

(b) after the final determination of any appeal in relation to the serious offence concerned, whichever is the later.

PART VII

CARRYING OUT FORENSIC PROCEDURES ON VOLUNTEERS AND OTHERS

48.(1) In this Part, "volunteer" means a person who voluntarily agrees to assist the police in the investigation of an offence.

Carrying out of forensic procedure on volunteers.

(2) An authorised person may carry out a forensic procedure on a volunteer

- (a) where the volunteer is not an incapable person, with the informed consent of the volunteer given in accordance with section 49; or
- (b) where the volunteer is an incapable person,
 - (i) with the informed consent of the parent or guardian of the volunteer given in accordance with section 49; or

- (ii) by order of a Court under section 52;

(3) Notwithstanding subsection (1), this section does not authorise a person to carry out a forensic procedure on an incapable person who objects to or resists the carrying out of the procedure.

(4) Part V applies to the carrying out of a forensic procedure under this Part on a volunteer mentioned in this section as if a reference to a suspect in Part V were a reference to the volunteer.

49. (1) A volunteer, or where the volunteer is an incapable person, a parent or guardian of a volunteer, may give informed consent in accordance with this section where the consent is given

Informed consent of volunteer or parent or guardian of volunteer.

- (a) in the presence of an independent person who is not a police officer; and
 - (b) after a police officer informs the volunteer or the parent or guardian of the following:
 - (i) the forensic procedure that is to be carried out;
 - (ii) that the volunteer or the parent or guardian of the volunteer is under no obligation to undergo the procedure;
 - (iii) the procedure may produce evidence that might be used in a Court of law; and
 - (iv) to the extent that they are relevant, of the matters mentioned in subsection (2);
 - (c) that the volunteer, or the parent or guardian of the volunteer may consult an attorney-at-law of his choice before deciding whether or not to consent to the procedure; and
 - (d) the volunteer, or the parent or guardian of the volunteer may at any time withdraw the consent.
- (2) The police officer referred to in subsection (1) shall, before obtaining consent, inform the volunteer, or the parent or guardian of the volunteer, in writing,
- (a) that information obtained from the analysis of forensic material taken from a person under this Part about the identity of the person, may be placed on the DNA database system;

- (b) where the police officer intends the information to be placed on a DNA database Index System to be used for limited purposes only and to be known as the Volunteers (Limited Purposes) Index of that system, the purpose for which it is to be placed on that index and that the information may be used only for that purpose;
- (c) where the police officer intends the information to be placed on a DNA database Index System to be known as the Volunteers (Unlimited Purposes) Index of that system that is to be used for a criminal investigation or any other purpose for which the DNA database system may be used;
- (d) that information placed on the DNA database system will be retained only for such period as the Commissioner and the volunteer or, where the volunteer is an incapable person, a parent or guardian of the volunteer, agree and shall then be removed from the system; and
- (e) any other matters that may be prescribed.

(3) Where a police officer referred to under subsection (2) requires a change of purpose from the use of a limited purpose index to that of an unlimited purpose index, the police officer shall first obtain in writing the informed consent of the volunteer or the parent or guardian of the volunteer as the case may be.

50. A police officer shall ensure that the giving of the information about the proposed forensic procedure and the responses of the volunteer or the parents or guardian of the volunteer, if any, are recorded in writing and also where practical, by audiotape, videotape or other electronic means and that a copy of the record is made available to the volunteer, or the parent or guardian as the case may be.

Recording
of giving of
information
and consent.

Withdrawal
of consent.

51. (1) Where a volunteer, or a parent or guardian of the volunteer, expressly withdraws consent to the carrying out of a forensic procedure under this Part,

- (a) the procedure shall be treated from the time of the withdrawal, as a forensic procedure for which consent has been refused; and
- (b) where the volunteer is an incapable person, the procedure is not to proceed except by an order of a Court under section 52.

(2) Where, after the carrying out of a forensic procedure under this Part on a volunteer, the volunteer, or the parent or guardian of the volunteer, expressly withdraws consent to the retention of

- (a) the forensic material taken; or
- (b) information obtained from the analysis of that material,

the material and any information obtained from analysis of the material is, subject to any order made under section 54, to be destroyed as soon as practicable after the consent is withdrawn.

(3) A police officer may request a parent or guardian who withdraws consent to the carrying out of a forensic procedure under this Part to confirm the withdrawal of consent in writing.

Circum-
stances in
which judge
may order
carrying out
of forensic
procedure
on an
incapable
person.

52. Where an offence has been committed against an incapable person, a Court may on application made to it pursuant to this section, order the carrying out of a forensic procedure on the incapable person if

- (a) the consent of the parent or guardian of the incapable person to the carrying out of the forensic procedure cannot reasonably be obtained from that parent or guardian;

- (b) the parent or guardian of the incapable person refuses to consent to the carrying out of the procedure and the judge is satisfied that there are reasonable grounds to believe
 - (i) that the parent or guardian is a suspect; and
 - (ii) that the forensic procedure is likely to produce evidence tending to confirm or disprove that the parent or guardian committed an offence; or
- (c) the parent or guardian of the incapable person consented to the carrying out of the procedure, but subsequently withdrew that consent.

53.(1) In determining whether to make an order under section 52, the Court shall take into account

Matters to be considered by Court.

- (a) whether this Act authorises the carrying out of the forensic procedure apart from this section;
- (b) where the procedure is being carried out for the purposes of the investigation of a particular offence, the seriousness of the circumstances surrounding the commission of that offence;
- (c) the best interests of the incapable person;
- (d) so far as they can be found out, any wishes of the incapable person about whether the procedure should be carried out;
- (e) except in the circumstances mentioned in paragraph (b) of section 52, any wishes expressed by the parent or guardian of the incapable person about whether the procedure should be carried out; and

- (f) whether the carrying out of the procedure is justified in all the circumstances.
- (2) An order under this section may
 - (a) require the forensic procedure to be carried out at a date, time or place, or in a manner, stated in the order; or
 - (b) state the period for which forensic material obtained from carrying out the procedure may be retained.

54. (1) The Court may on the application of an authorised applicant, order that forensic material taken or information obtained from carrying out a procedure on a volunteer who withdraws consent to the retention of the material, be retained where the Court is satisfied that

Retention of forensic material by order of Court after withdrawal of consent.

- (a) during an investigation into the commission of a serious offence, material reasonably believed to be from the body of a person who committed the serious offence had been found
 - (i) at the scene where the offence was committed;
 - (ii) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed;
 - (iii) on the volunteer or on anything reasonably believed to have been worn or carried by the volunteer at the scene of the offence or when the offence was committed; or
 - (iv) on a thing or on a person reasonably believed to have been associated with the commission of that serious offence;

- (b) there are reasonable grounds to believe that information obtained from analysis of the forensic material taken from the volunteer is likely to produce evidence of probative value in relation to the serious offence; and
 - (c) the retention of the forensic material taken from the volunteer is justified in all the circumstances.
- (2) The order may specify the period for which the forensic material obtained from carrying out the procedure may be retained.

PART VIII

ADMISSIBILITY OF EVIDENCE

Forensic evidence

55. (1) Section 116 of the *Evidence Act* shall apply in determining the admissibility of evidence related to or connected with the carrying out of a forensic procedure under this Act where

Determination of admissibility of evidence.

- (a) evidence of forensic material, or evidence consisting of forensic material taken from a person;
- (b) evidence of any results of the analysis of the forensic material; or
- (c) any evidence obtained because of or in connection with the carrying out of the forensic procedure

is sought to be admitted in any proceedings and the evidence has been obtained in contravention of the procedure required to be carried out on the person, including any failure to comply with a provision requiring things to be done at any time before or after the procedure is carried out.

(2) Notwithstanding subsection (1), the Court may admit the evidence referred to in that section where

- (a) the person concerned does not object to the admission of the evidence; or
- (b) the Court has taken into account the matters set out in subsection (3) and is satisfied on the balance of probabilities that the evidence should be admitted in the proceedings despite the breach of, or failure to comply with, the provisions of this Act.

(3) The Court, in deciding whether evidence should be admitted under this Part, shall take into consideration the following:

- (a) the probative value of the evidence, including whether equivalent evidence or evidence of equivalent probative value could have been obtained by other means;
- (b) the reasons given for the breach of, or failure to comply with, the provisions of this Act;
- (c) the gravity of the breach of, or failure to comply with, the provisions of this Act;
- (d) whether the breach or failure to comply was intentional or reckless;
- (e) the nature of the provision of this Act that was breached or not complied with;
- (f) the nature of the offence concerned and the subject matter of the proceedings; and
- (g) any other matters the Court considers relevant.

(4) The probative value of the evidence does not, by itself, justify the admission of the evidence.

56. Where this Act requires the destruction of forensic material taken from a person by a forensic procedure, evidence of the results of the analysis and any other evidence taken during that procedure or of or in connection with the carrying out of that procedure is not admissible in any proceedings against that person.

Inadmissibility of evidence if forensic material is to be destroyed.

Other evidence

57. (1) Evidence of a person's refusal or failure to consent, or withdrawal of consent to a forensic procedure is admissible in a proceeding against the person in a Court only to establish or rebut an allegation that a police officer investigating the commission of the offence concerned acted contrary to this Act in carrying out the investigation.

Admissibility of evidence relating to consent to forensic procedures.

(2) Notwithstanding section 55(2), evidence of how a forensic procedure was carried out is admissible in a proceeding against a person in a Court to

- (a) establish or rebut an allegation that coercion, threats, inducement or unreasonable force was used to enable the procedure to be carried out;
- (b) decide the admissibility of a confession or admission or other evidence adverse to the person where the person alleges that the evidence was induced or obtained by the use of unreasonable force; or
- (c) establish or rebut an allegation that the procedure was not carried out in accordance with Part V.

58. (1) Where a magistrate has ordered the carrying out of a forensic procedure on a suspect under this Act, evidence that the suspect

Evidence of suspect's refusal to comply with directions.

- (a) refused to comply with any reasonable direction in connection with the carrying out of the forensic procedure; or

- (b) obstructed, resisted, hindered, used violence against, threatened or intimidated a person in connection with the carrying out of the procedure,

is admissible in a proceeding against the suspect in a Court in relation to the offence in respect of which the procedure was carried out.

(2) Evidence mentioned in subsection (1) is admissible only if it is established that the suspect had been informed by a police officer, or otherwise knew, that the fact of refusing to comply with the direction, or obstructing, resisting, hindering, using violence against, threatening or intimidating the person, in connection with the carrying out of the forensic procedure might be used in evidence against the suspect.

(3) The Court or jury may draw such inferences from the evidence mentioned in subsection (1) as appear to the Court or jury to be proper in the circumstances, having regard to any evidence given by or on behalf of the suspect.

PART IX

DESTRUCTION OF FORENSIC MATERIAL

Destruction
of forensic
material
obtained by
magistrate.

59. (1) Where a magistrate disallows an interim order for the carrying out of a forensic procedure made under section 23, the magistrate shall order

- (a) any forensic material obtained as a result of the carrying out of the procedure; and
- (b) a copy of the results of any analysis of that forensic material

to be destroyed as soon as practicable after the disallowance.

- (2) Where an order by a Court for
- (a) the carrying out of a forensic procedure made under section 52;
or
- (b) the retention of forensic material under section 54,

states a period for which the material obtained as a result of the carrying out of the procedure may be retained, the material shall be destroyed as soon as practicable after the end of the period.

60. Where a police officer obtained an order under Part VI for the carrying out of a forensic procedure on a serious offender whose conviction was quashed after the making of the order, the Commissioner shall

Destruction of forensic material taken from serious offender after conviction quashed.

- (a) inform the Director of the quashed conviction; and
- (b) ensure that any forensic material obtained as a result of the carrying out of the procedure is destroyed by the Director as soon as practicable after the conviction is quashed.

61.(1) Where a proceeding for an offence to which the forensic material relates has not been instituted within 1 year after the material was taken or the proceeding has been discontinued, the material shall be destroyed by the Director as soon as it is practicable to do so unless

Destruction of forensic material after 1 year.

- (a) a warrant for the apprehension of the suspect has been issued; or
- (b) the Court otherwise directs under subsection (4).
- (2) Where forensic material has been taken from a person who is a suspect and
- (a) the person is found to have committed an offence to which the forensic material relates but no conviction is recorded; or

- (b) the person is acquitted of an offence to which the forensic material relates and no action is brought in respect of the decision or acquittal,

the forensic material shall be destroyed as soon as practicable.

(3) Notwithstanding subsection (2), where an investigation into, or a proceeding against a person referred to in that section is pending in relation to another offence to which the material relates, the material may be retained.

(4) The Court may, on application by the Director of Public Prosecutions, extend for not longer than 1 year the period for which forensic material may be retained under this section, where the Court is satisfied that the extension is justified in the circumstances.

(5) The Court to whom an application is made under subsection (4) may extend the period only where

- (a) the person from whom the forensic material was taken has been notified by the Director of Public Prosecutions that the application has been made; and
- (b) the person or the attorney-at-law, parent, guardian or adult friend of that person has been given an opportunity to speak to or make a submission to the Court about the extension.

(6) An extension in relation to particular forensic material may be given more than once but in no case shall the cumulative periods exceed 3 years.

Destruction
of forensic
material if
related
evidence is
inadmissi-
ble.

62. Where the Court finds that evidence mentioned in section 55(1) relating to a forensic procedure is inadmissible under section 55, the Court shall order that any forensic material taken from the suspect by that procedure be destroyed by the Director as soon as practicable.

63. Where, under this Act, the Director is required to destroy forensic material taken from a person, the Director shall issue a certificate to the effect that the material had been destroyed and the date and time of such destruction.

Certificate of Destruction of forensic material.

PART X

DNA DATABASE SYSTEM

64. In this Part,

"crime scene DNA index" means an index of DNA profiles derived from forensic material found

Definitions relating to DNA database system.

- (a) at any place whether in or outside Barbados where a serious offence was, or is reasonably suspected of having been committed;
- (b) on or within the body of a victim, or a person reasonably suspected of being a victim of a serious offence;
- (c) on anything worn or carried by the victim when a serious offence was, or is reasonably suspected of having been committed; or
- (d) on or within the body of anyone, on anything, or at any place, associated with the commission of a serious offence;

"DNA database system" means a database, whether in computerised or other form and however described, containing

- (a) the following indices of DNA profiles:
 - (i) a crime scene DNA index;
 - (ii) a missing persons index;

- (iii) an unknown deceased persons index;
- (iv) a serious offenders index;
- (v) a volunteers (unlimited purposes) index;
- (vi) a volunteers (limited purposes) index;
- (vii) a suspects index; and

information that may be used to identify the person from whose forensic material each DNA profile was derived;

- (b) a statistical index; and
- (c) any other index that may be prescribed;

"excluded forensic material" means forensic material

- (a) found at a crime scene;
- (b) taken from a suspect in relation to a serious offence referred to under Part II, Part III or Part IV, or under a corresponding law of a participating jurisdiction, where the suspect is subsequently convicted of the serious offence;
- (c) taken from a serious offender or volunteer under Part VI or VII or under a corresponding law of a participating jurisdiction;
- (d) taken from the body of a deceased person;
- (e) that is from the body of a missing person; or
- (f) taken from a volunteer who is a relative by blood of a deceased or missing person;

"prohibited analysis" means analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system

(a) that is taken in contravention of this Act; or

(b) when the forensic material is required to be destroyed by this Act or under a corresponding law of a participating jurisdiction.

"identifying information" means any information that could be used

(a) to reveal the identity of the person from whose forensic material the DNA profile was derived; or

(b) to provide information about an identifiable person;

"missing persons index" means an index of DNA profiles derived from forensic material of

(a) persons who are missing; and

(b) volunteers who are relatives by blood of missing persons;

"participating jurisdiction" means in relation to this Part, Part XI and Part XII a jurisdiction in which a corresponding law is in force;

"serious offenders index" means an index of DNA profiles derived from forensic material taken

(a) under Part II from suspects who have been convicted of a serious offence; and

(b) under Part VI, or under a corresponding law of a participating jurisdiction from serious offenders;

"statistical index" means an index of information that

(a) is obtained from the analysis of forensic material taken from persons in accordance with this Act or a corresponding law of a participating jurisdiction; and

(b) has been compiled for statistical purposes

but does not contain information that would reveal the identity of persons from whom the forensic material was taken;

"suspects index" means an index of DNA profiles derived from forensic material taken from suspects

(a) under Part II, Part III or Part IV; or

(b) under a corresponding law of a participating jurisdiction from suspects;

"unknown deceased persons index" means an index of DNA profiles derived from forensic material of deceased persons whose identities are unknown;

"volunteers (limited purposes) index" means an index of DNA profiles derived from forensic material taken under Part VII or under a corresponding law of a participating jurisdiction, from volunteers who, or whose parents or guardians have been informed that information obtained under paragraph (b) of section 49(2) shall be used

(a) only for the purpose of a criminal investigation; or

(b) any other purpose for which the DNA system may be used under this Part, or the corresponding law of the other jurisdiction;

"volunteers (unlimited purposes) index" means an index of DNA profiles derived from material taken

(a) under Part VII or under a corresponding law of a participating jurisdiction, from volunteers who, or whose parents or guardians, have been informed under paragraph (c) of section 49(2), that information obtained may be used for the purpose of a criminal investigation or any other purpose for which the DNA database system may be used; and

(b) from deceased persons whose identity is known.

65.(1) A person who intentionally or recklessly supplies or causes the supply of forensic material taken from any person under this Act or under a corresponding law of a participating jurisdiction

Supply of forensic material for purpose of DNA database.

(a) to anyone for prohibited analysis; and

(b) to a person who is not expressly authorised to have access to such information,

in contravention of this Act is guilty of an offence and is liable on indictment to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

(2) A person who intentionally or recklessly causes the supply of forensic material, other than excluded forensic material, to be supplied to anyone for analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system in contravention of this Act is guilty of an offence and is liable on indictment to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

66. (1) No person, other than the person who has responsibility for administering the DNA data base system may have access to information stored on the DNA database system except in accordance with this section.

Use of information on DNA database system.

(2) A person may be permitted to have access to information stored on the DNA database system for any of the following purposes:

(a) to enable forensic comparison

(i) in the course of a criminal investigation by a police officer or other person;

(ii) that is permitted under section 67;

- (b) to make the information available, in accordance with the Act or Regulations;
- (c) to administer the DNA database system;
- (d) to effect any arrangement entered into between Barbados and another State for the provision of access to information contained in the DNA database system by law enforcement officers or by anyone else prescribed under the Regulations;
- (e) to facilitate

Cap. 140A.
Cap. 189.

- (i) co-operation under the *Mutual Assistance in Criminal Matters Act* or the *Extradition Act*;

Cap. 113.

- (ii) investigation under a Coroner's inquiry pursuant to the *Coroners Act*; and

- (iii) investigation of a complaint in respect of the issue of paternity.

Permissible matching of DNA Profiles.

67. The matching of DNA profile on an index of the DNA database system with a DNA profile on another index of the system shall be carried out in accordance with international standards in relation thereto.

Restricted use of DNA data base.

68.(1) A person may

- (a) make only such searches of DNA profiles as are authorised under this Act;
- (b) have access only to the information needed to achieve the stated objective desired.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on indictment to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

(3) The Court shall order the confiscation and destruction of any information obtained by a person convicted of a contravention of this section.

69. (1) A person who retains or causes any identifying information about a person obtained from forensic material taken from the person under this Act to be recorded or retained in a DNA database system at any time after this Act requires the forensic material to be destroyed, is guilty of an offence and is liable on indictment to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

Recording, retention and removal of identifying information on DNA database system.

(2) The Director shall ensure that any identifying information relating to

- (a) a person from whose forensic material a DNA profile on the volunteers (unlimited purposes) index or volunteers (limited purposes) index of the DNA database system was derived is removed from the system as soon as practicable after the identification has been confirmed and in any case no later than 1 year;
- (b) a DNA profile of a serious offender on the serious offenders index of the DNA database system is removed from the system as soon as practicable after becoming aware that the serious offender has been pardoned or acquitted of the serious offence concerned or that the conviction of the serious offender for the serious offence concerned has been quashed and in any case no later than 1 year.

Disclosure
of informa-
tion.

70. (1) A person who has access

- (a) to any information stored on the DNA database system; or
- (b) to any other information revealed by a forensic procedure carried out on the suspect, serious offender or volunteer;

shall not disclose that information except for one or more of the following purposes:

- (a) forensic comparison in the course of a criminal investigation by a police officer or by other persons authorised under the Act or Regulations;
- (b) making the information available, in accordance with the Act or the Regulations, to the person to whom the information relates;
- (c) administering the DNA database system;
- (d) the compliance with a Court Order under the *Status of Children Act* or any other enactment in which the question of parentage arises;
- (e) the compliance with the *Mutual Assistance in Criminal Matters Act* or the *Extradition Act* or other enactment that permits the access to such information;
- (f) proceedings under a coroner's inquest or inquiry; or
- (g) the investigation of a complaint by an investigatory body or someone who has corresponding functions under the law of another participating jurisdiction.

Cap. 220

Cap. 140A
Cap. 189.

(3) Information referred to in subsection (1) may only be disclosed :

- (a) to the person who is the suspect, serious offender or volunteer to whom the information relates;

- (b) where the information is already publicly known;
 - (c) in accordance with any other provision of this Act;
 - (d) to the competent person in accordance with the *Mutual Assistance in Criminal Matters Act* or the *Extradition Act*;
 - (e) to the person in charge of an investigation into the commission of any offence generally
 - (i) to determine whether to institute a proceeding for any offence; or
 - (ii) for the purposes of obtaining evidence to facilitate the prosecution of any offence;
 - (f) for the purposes of a coroner's inquest or inquiry;
 - (g) for the purposes of a civil proceeding, including a disciplinary proceeding that relates to how the procedure was carried out;
 - (h) for the purposes of obtaining medical treatment for a victim of an offence where there are reasonable grounds to believe the offence was committed by the person on whom the forensic procedure was carried out; or
 - (i) where the suspect, serious offender or volunteer consents in writing to the disclosure.
- (4) This section does not apply to information that cannot be used to discover the identity of any person.

- (5) A person
 - (a) whose conduct causes the disclosure of information in contravention of this section; and
 - (b) who intends, or is reckless about, the disclosure of information

is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 3 years.

Taking,
retention
and use of
forensic
material in
accordance
with another
law.

71. (1) This Act does not affect the taking, retention or use of forensic material, or information obtained from forensic material where the taking, retention or use is authorised under any other law.

(2) Forensic material, or information obtained from it, that was taken in accordance with any other law may be retained or used for investigative, evidentiary or statistical purposes even if its retention or use would, apart from this subsection, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of forensic procedures.

72. (1) The Director shall consult such persons trained in the sciences as the Director may think suitable

Consulta-
tion by
Director.

- (a) to advise in establishing
 - (i) the standards for testing the proficiency of conducting DNA forensic analysis and the methods of conducting such analysis,
 - (ii) the standards for the protection of tissue samples, bodily substances and DNA data; and
- (b) generally for conducting the business of the Forensic Sciences Centre as it relates to DNA forensic analysis.

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

73. (1) In any civil or 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 tester who recorded the information, unless the Court, acting on its own motion or at the request of a party to the proceedings, requires that person to be called as a witness.

Documen-
tary
evidence.

(2) The Court is not bound to require the attendance of a person as a witness under subsection (1) where 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.

Disclosure of Information on DNA Database

Disclosure of Information on DNA Database. **74.** The provisions of section 75 shall apply in respect of the disclosure of information stored on a DNA database system.

Offences. **75.** A person who wilfully and unlawfully

- (a) discloses or obtains DNA data without authorisation;
- (b) breaks the seal of or opens or causes to be opened any DNA package;
- (c) falsifies any DNA data stored in the index of DNA data records by the addition, deletion, or modification of any information in that index;
- (d) provides false information with the intent that it should be stored in the index of DNA data records;
- (e) 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;
- (f) gains or attempts to gain access to the index of DNA data records;

is guilty of an offence and is liable on indictment to a fine of \$100 000 or to imprisonment for 7 years.

PART XII

SHARING DNA INFORMATION

Arrange-ment with foreign governments to share DNA information. **76.** (1) The Government of Barbados may enter into arrangements with the Government of another country under which information from the DNA database system

- (a) in Barbados, that may be relevant to the investigation of an offence against the law of another country is provided to the appropriate authority in that country for the investigation of, or proceedings for, that offence; and
 - (b) of another country, that may be relevant to the investigation of an offence in Barbados is provided to the Commissioner for the investigation of, or proceedings for, that offence.
- (2) Information that is provided under this section shall not be recorded or maintained in any database of information that may be used
- (a) to reveal the identity of a person; or
 - (b) to obtain information about an identifiable person at any time after this Act or a corresponding law of a participating jurisdiction requires the forensic material to which it relates to be destroyed.

PART XII

GENERAL PROVISIONS IN RESPECT OF THE OPERATION OF ACT

- 77.** (1) A request by a suspect or serious offender that is permitted under this Act may be made by
- (a) the attorney-at-law of the suspect or serious offender;
or
 - (b) where the suspect or serious offender is an incapable person, an adult representative of the suspect or of the serious offender

Representa-
tion by
attorney-at-
law or other
adult.

referred to in this Part as "the relevant party".

Copy of transcript etc. to be made available to suspect.

78. (1) Where a recording in writing or by audiotape, videotape or other electronic means is made as required by this Act, the investigating police officer shall ensure that where

(a) a transcript of the recording or an audio recording is made, a copy of the transcript or a copy of the audio recording is made available to the suspect, serious offender or volunteer as the case may be;

(b) a video recording is made a copy is made available to the suspect, serious offender or volunteer or he is given an opportunity to view the video recording.

(2) Where an investigating police officer is required to ensure that the suspect, serious offender or volunteer is given an opportunity to view a video recording made under this Act, the investigating police officer shall ensure that the same opportunity is given to the relevant party.

Delivery of material to suspect, serious offender or volunteer.

79. (1) Any material from samples or copies or any other material that is to be made available to a suspect, serious offender or volunteer under this Act

(a) may be delivered to the suspect, serious offender or volunteer by a police officer at the police station where the investigating police officer was based when the forensic procedure was carried out; or

(b) may be sent by courier or registered mail to the address of the suspect, serious offender or volunteer or where the address is unknown, to the attorney-at-law if any, of the suspect serious offender or volunteer.

(2) Material of any kind, other than material from samples and copies of records made under section 26 that is required by this Act to be made available to a suspect, serious offender or volunteer shall be made available in accordance with subsection (1)

- (a) as soon as practicable after the material comes into existence; or
- (b) where the material is requested by the suspect, serious offender or volunteer or the relevant party as soon as practicable after the making of the request.

80. Where this Act requires

- (a) material of any kind to be given to a suspect, serious offender or volunteer; or
- (b) an opportunity to view a video recording to be given to a suspect, serious offender or volunteer,

Suspect, serious offender or volunteer not to be charged for material or viewing video.

the material or the opportunity to view the video shall be given without charge.

81. Where under this Act a police officer is required to act on reasonable grounds in any proceedings, the burden lies on the prosecution to prove on a balance of probabilities that a police officer did have belief on reasonable grounds as to a matter mentioned in this Act.

Burden of proof.

82. Where the Act requires that some action must be taken if practicable in any proceedings under this Act, the burden lies on the prosecution to prove on the balance of probabilities that it was not practicable to take the required action.

Proof of impracticability.

83. No civil or criminal liability is incurred by anyone, who is authorised under this Act to carry out or to assist in the carrying out of a forensic procedure under this Act in relation to anything done by the person in the discharge of his responsibilities where

Liability for forensic procedures.

- (a) the person believed on reasonable grounds that
 - (i) informed consent had been given to the carrying out of the forensic procedure; or

- (ii) the carrying out of the forensic procedure without informed consent had been duly ordered by a Court under this Act;
- (b) the thing was done in good faith; and
- (c) the execution of it was reasonable in all the circumstances.

Retention of
electronic
recordings.

84. (1) A recording made by audiotape, videotape or other electronic means by a police officer in accordance with this Act that is no longer required for investigative or evidentiary purposes may be retained for the purposes, and for such period as the Commissioner directs.

(2) A recording that is retained under this section shall be stored so as to protect it against unauthorised access or use by anyone.

Storage
and
delivery
of DNA
material.
Second
Schedule.

85. The procedure to be followed in the storage and delivery of material respecting DNA is that set out in the *Second Schedule*.

PART XIII

MISCELLANEOUS

86. The Director may, in writing, delegate the functions of Director under this Act to the Deputy Director or an appropriately qualified Forensic Scientist of the Forensic Sciences Centre.

Delegation by Commissioner of Police, Director of Forensic Sciences Centre.

87. Any person who intentionally obstructs, hinders or resists a police officer or any other person authorised under this Act to exercise functions relating to the carrying out of a forensic procedure is guilty of an offence and is liable on indictment to a fine of \$10 000 or to imprisonment for a term of 3 years or to both.

Other offences.

88.(1) There shall be charged in respect of the services provided under this Act or Regulations the fees payable in respect of those services.

Fees.

(2) The Minister shall with the approval of the Minister of Finance, make Regulations in respect of the fees payable under subsection (1).

89. Subject to subsection (2), the Minister may by Order subject to negative resolution amend any of the *Schedules* to this Act.

Amendment of Schedules.

90. This Act shall not be interpreted to compel a medical practitioner or dentist to carry out a forensic procedure.

Experts not obliged to carry out forensic procedures

91.(1) The Minister may make Regulations

Regulations.

(a) prescribing matters required by this Act to be prescribed;

- (b) providing for the licensing and operation of businesses that offer private forensic service; and
- (c) for the purpose of giving effect to the provisions of this Act.

(2) The Minister may annex to the contravention of or failure to comply with any Regulations made under this section a punishment by way of a fine of \$10 000 or imprisonment for a term of 3 years, or both such fine and imprisonment, and in the case of a continuing offence, to a further fine of \$250 for each day or part thereof during which the offence continues after the conviction is first obtained.

(3) The Minister of Finance may exempt persons from the payment of the fees payable under section 88(1) subject to the conditions and in the manner prescribed.

(4) Regulations made under this Act are subject to negative resolution.

Amendment
of
enactments
set out in
the Third
Schedule.

92. The enactments set out in column 1 of the *Third Schedule* are amended in the manner specified opposite thereto in column 2 of that *Schedule*.

PART XIV

TRANSITIONAL

Forensic
procedures
under
Part VI.

93. A person is authorised by section 38 to carry out a forensic procedure under Part VI on a serious offender whether the serious offender was convicted of the serious offence concerned before, or after the commencement this Act.

Forensic
material
taken before
commence-
ment.

94. Forensic material taken before the commencement of this Act in accordance with the law, and information obtained from it, may be retained or used for investigative, evidentiary or statistical purposes notwithstanding that its retention or use would be, apart from this section, a breach of, or failure to comply with any provision of this Act.

FIRST SCHEDULE

(Section 33)

PART I

**GENERAL RULES FOR CARRYING OUT
FORENSIC PROCEDURES**

1. A forensic procedure shall
 - (a) be carried out in circumstances providing reasonable privacy to the suspect;
 - (b) except as permitted under another provision of this Act, not be carried out in the presence or view of anyone who is of the opposite sex to the suspect;
 - (c) not be carried out in the presence or view of a person whose presence is not necessary for the forensic procedure or required or permitted under another provision of this Act;
 - (d) not involve the removal of more clothing than is necessary for carrying out the procedure;
 - (e) not involve more visual inspection than is necessary for carrying out the procedure; and
 - (f) shall not involve questioning of the suspect while the procedure is being carried out.
2. A person is authorised to take a sample of hair of a suspect by removing the root of the hair but
 - (a) that person shall take only so much hair as the person believes is necessary for analysis of the sample, or other examination of the hair, to be carried out for the purpose of investigating the relevant offence; and
 - (b) each strand of hair shall be taken individually using the least painful technique known and available to the person.
3. (1) Where practicable, an intimate forensic procedure, other than the taking of a sample of blood or a dental impression, shall be carried out by a person of the same sex as the suspect.

(2) Where practicable, a non-intimate forensic procedure for which the suspect is required to remove clothing, other than his or her coat, jacket, gloves, socks, shoes and hat shall be carried out by a person of the same sex as the suspect.

(3) Where practicable, a person asked under section 33 to help carry out a forensic procedure covered by paragraph (1) or (2) shall be a person of the same sex as the suspect.

***Presence of other people while forensic
procedure is carried out***

4. (1) A suspect is entitled to request a medical practitioner of his or her choice to be present while an intimate forensic procedure, other than the taking of a dental impression, is carried out.

(2) The medical practitioner or dentist chosen shall be present at the carrying out of the forensic procedure unless that doctor or dentist

(a) cannot, or does not wish to, attend; or

(b) cannot be contacted

within a reasonable time or, if relevant, within the time in which the person responsible for the carrying out of the forensic procedure considers the forensic procedure should be carried out if it is to be effective in providing evidence of the offence concerned.

5. (1) Where the suspect on whom a forensic procedure is to be carried out is a child or other incapable person, either an adult person or the attorney-at-law of the suspect where that attorney-at-law is not such a person, shall be present while the forensic procedure is carried out.

(2) Both the adult person and the attorney-at-law referred to under paragraph (1) may be present.

(3) An adult person, other than the attorney-at-law of a suspect who is a child or other incapable person may be excluded from the place where the forensic procedure is being carried out where the adult person unreasonably interferes with or obstructs the carrying out of the procedure.

6. (1) The number of police officers that may be present during the carrying out of a forensic procedure shall not exceed the number reasonably necessary to ensure that the procedure is carried out effectively and in accordance with this Act.

(2) A police officer who is of the opposite sex to that of the suspect may only be present during the carrying out of a forensic procedure where it would not be reasonably practicable to have present the officer of the opposite sex.

(3) This paragraph does not apply to the following forensic procedures:

(a) the taking of handprints, fingerprints, footprints or toeprints;

(b) any non-intimate forensic procedure that may be carried out without requiring the suspect to remove any clothing, other than his or her coat, jacket, gloves, socks, shoes and hat.

PART II

MATTERS IN RESPECT OF WHICH SERIOUS OFFENDERS SHALL BE INFORMED UNDER SECTION 41

7. (1) The serious offender shall be informed:

(a) of the purpose for which the forensic procedure is required;

(b) where the police officer wants the forensic procedure carried out in relation to a serious offence, the serious offence;

(c) how the procedure is to be carried out;

(d) that the procedure may produce evidence against the serious offender that might be used in a Court of law;

(e) that the procedure is to be carried out by a person who may carry out the procedure under Part V as applied by section 38;

(f) where the forensic procedure is the taking of a sample of blood, that the serious offender may request that,

(i) where the offender is serving a sentence of imprisonment in a prison or other place of detention, the prison medical officer be present while the blood is taken; or

(ii) where the offender is not serving a sentence of imprisonment, a medical practitioner of the serious offender's choice be present while the blood is taken;

- (g) that the serious offender may refuse consent to the carrying out of the forensic procedure;
- (h) the consequences of not consenting, as mentioned under paragraph (2) or (3) as the case may be;
- (i) the effect of section 57 in relation to the admissibility of evidence relating to consent to forensic procedures;
- (j) that information obtained from analysis of forensic material obtained may be placed on the DNA database system and used for a criminal investigation or any other purpose for which the DNA database system may be used.

(2) The police officer referred to under paragraph (1) shall inform a serious offender requested to undergo a non-intimate forensic procedure to which this Part applies that, if the serious offender does not consent, a police officer may order the carrying out of the forensic procedure under section 42 if the police officer has taken into account the matters set out in section 43.

(3) The police officer referred to under paragraph (1) shall inform a serious offender requested to undergo an intimate forensic procedure to which this Part applies that, if the serious offender does not consent, an application may be made to a Court for an order authorising the carrying out of the forensic procedure.

SECONDSCHEDULE

*(Section 85)***Procedure Respecting Storage and
Delivery of DNA Packages**

1. Where DNA procedures have been carried out in respect of any investigation the police officer in charge of the investigation shall deliver the DNA package to the Forensic Sciences Centre within 5 days from the date of collection of the material or such other period as the Director deems appropriate in accordance with international standards or guidelines referred to in section 30.

2. The police officer referred to under subsection (1) 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 Sciences Centre it is properly stored.

3. A person who receives a DNA package at the Forensic Sciences Centre for testing shall ensure that the package is properly sealed, labelled, and identifiable both by that person and by the police officer who delivers the package to him.

4. The person who receives a DNA package shall complete a form approved by the Minister 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 that person 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) the name and signature of that person; and
- (f) any other relevant information.

5. The police officer referred to under subsection (1) shall then sign the prescribed form.

6. A forensic scientist shall prepare and provide a DNA report in writing to the Court stating the following information:

- (a) a statement that the seal of the package containing the DNA sample 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 results of the DNA forensic analysis;
- (d) the name and signature of the forensic scientist ; and
- (e) any other relevant information.

7. The Director shall ensure the DNA data is securely stored and remains confidential.

THIRD SCHEDULE

(Section 92)

*First Column**Second Column*1. *Evidence Act, Cap. 121*

1. In section 132C, delete paragraph (b) of subsection (1) and substitute the following:

"(b) of any other substance or forensic material that has been seized or taken from a person for the purposes of a criminal investigation,".

2. Insert immediately after section 132E the following:

"132F. Sections 132C to 132E shall apply with such modifications and adaptations that are required to give effect to the *Forensic Procedures and DNA Identification Act, 2004* in respect of the giving of evidence relating to the carrying out of forensic procedures under that Act.".

Act
2004-

THIRD SCHEDULE (Cont'd)

First Column

2. *Status of Children Act, Cap. 220*

Second Column

1. Insert immediately after section 15, the following section as section 15A:

"DNA
Forensic
Analysis.

15A. (1) Notwithstanding section 15, where in any civil proceedings the question of whether a person is the parent of a child or other person falls to be determined by the Court hearing the proceedings, the Court may, on an application by any party to the proceedings, give a direction for

- (a) the use of DNA forensic analysis to ascertain whether that analysis shows that a party to the proceedings is or is not the parent of that child or other person; and
- (b) the taking within a period to be specified in the direction, of a DNA sample from that child and from any person alleged to be the parent of that child or other person or from any of those persons.

(2) A forensic scientist of the Forensic Sciences Centre or a suitably qualified person from any agency approved by the Minister shall make a report to the Court by which the direction mentioned in subsection (1) was given, in which shall be stated:

- (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 child or other person,

THIRD SCHEDULE (Cont'd)

First Column

2. *Status of Children Act, Cap. 220 (Concl'd)*

Second Column

and the report shall be received by the Court as evidence in the proceedings of the matters stated in it."

2. In section 16,

(a) renumber paragraph (b) as paragraph (d); and

(b) insert the following new paragraphs as paragraph (b) and (c):

"(b) requiring

(i) the production at the time when a DNA sample is to be taken pursuant to this Act, the identity of the person from whom it is to be taken;

(ii) the person from whom a DNA sample is to be taken 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 rules, suffered from any such illness as may be specified, or has received a blood transfusion of blood;

(c) prescribing the form of the report to be made to a Court under section 15A(2)."