

Amendment of the Code of Criminal Procedure Law and the DNA study of convicts in connection with the introduction of DNA affinity and DNA research study by observable individual characteristics of the unknown victim and the rules of any other issues

Nr. 2

PROPOSAL OF LAW

We Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

Allen, who shall see or hear these presents! Be it known:

Whereas We have considered, it is desirable in the Code of Criminal Procedure the basis for the use of DNA affinity and DNA research study by observable individual characteristics of the unknown victim and any other matters that DNA Code and the Law study in convicts to settle;

So it is that we, the Council of State heard, and in consultation with the States-General, have approved and decreed as We hereby approve and decree:

ARTICLE I

THE CODE OF CRIMINAL PROCEDURE IS AMENDED AS FOLLOWS

A

Article 138a "or identifying externally visible characteristics of the unknown suspect person" replaced by, identifying externally visible characteristics of the individual or the unknown unknown suspect or victim establish kinship.

B

Article 151a shall be amended as follows:

1. The first paragraph shall read:

1. The prosecutor may of its own motion or on application by the accused or his counsel, the accused or third interest in the investigation of the cell material requests for a DNA test, aimed at comparing DNA profiles, to assist . Cellular material may, except in case of application of Article 151b or lost under the following sentence, only with written consent of the defendant and the third to be taken. If the third is missing because of a crime, DNA testing can be performed on cell material objects, which were seized from him, or cellular material that is otherwise obtained.

2. The second to ninth member shall become fourth to eleventh member.

3. Two paragraphs inserted, which read:
 2. The Prosecutor shall appoint an expert, attached to one of the in general administrative designate laboratories, with the mission to conduct the DNA test. The expert shall report to the Public Prosecutor a reasoned report.
 3. The powers referred to in the first and second paragraph, are also on the prosecutor added if the DNA test is performed on cellular material from an unknown suspect. The powers are limited by general administrative regulation to designate crimes.
4. In the fourth paragraph (new) is "under the fourth paragraph" replaced by "under the sixth paragraph" and "The fourth paragraph" by "The sixth member".
5. In the fifth paragraph (new) is "under the second paragraph replaced by" under the fourth paragraph "and" the fourth and fifth member "by" the sixth and seventh paragraphs.
6. In the sixth paragraph (new) is "the third paragraph" replaced by the fifth member.
7. In the seventh paragraph (new) is the "fourth member" replaced by the sixth paragraph.
8. In the eighth paragraph (new) is "the prevention, detection, prosecution and adjudication of criminal offenses" by "the prevention, detection, prosecution and trial of criminal offenses and to establish the identity of a corpse" and delete the phrase " , the Board heard personal protection ".
9. In the ninth paragraph (new) is "the first to sixth paragraph replaced by: the first to eighth member.
10. In the tenth paragraph (new) is the "fourth member" replaced by the sixth paragraph.

C

Article 151b shall be amended as follows:

1. In the first paragraph, "cellular material will be taken for a DNA test." Replaced by cellular material is taken for a DNA test under Article 151a, first paragraph, if he refuses his written consent. Article 151a, second and fourth to tenth paragraph, mutatis mutandis.
2. At the fourth paragraph, added a sentence which reads: In case of important reasons, the DNA testing to be performed on cell material objects, of which the accused have been seized, or cellular material that is otherwise obtained.

D

Article 151c deleted.

E

Article 151d shall be amended as follows:

1. In the first paragraph, "The public prosecutor may" by "The public prosecutor may in the interest of the investigation" and "the unknown suspect." Replaced by "unknown unknown suspect or victim. Article 151a, second paragraph, shall apply. ".
2. In the fourth paragraph, "in case of a crime" as follows: in case of suspicion of a crime.

F

After Article 151d shall be inserted an article, which reads:

Article 151da

1. Notwithstanding Article 21, fourth paragraph, of the Data Protection Act, the Public Prosecutor in the interest of the study recommended that a DNA research is aimed at establishing kinship. If the DNA test is performed using the DNA profiles, in accordance with this Code, the Data Protection Act and the Act to study DNA-convicts are processed, can be ordered only after written authorization from the judge to application of the Prosecutor. Article 151a, second paragraph, shall apply.

2. Cellular material that under this Code, the Data Protection Act or the Act to study DNA-convicts decreased for identifying and processing a DNA profile may be used to establish kinship. Cellular material from a known person who is not suspected of a crime, can only be purchased with his written consent and used to establish kinship.

3. The DNA test can be performed only in cases of suspicion of a crime for which the legal description of eight years imprisonment or more is made and one of the crimes described in Articles 109, 110, 141, second paragraph, under 1 °, 181, under 2 °, 182, 247, 248a, 248b, 249, 281, first paragraph, under 1 °, 290, 300, second and third paragraph, and 301, second paragraph, of the Criminal Code. If a DNA test under Article 151a, first paragraph, leads to the establishment of kinship, the prosecutor in this result the investigation use.

4. For general administrative arrangements can be made about the arrangements of the DNA testing.

G

Article 195a shall be amended as follows:

1. The first paragraph shall read:
 1. The judge can automatically on application of the prosecutor or at the request of the accused or his counsel, the accused or third interest in the investigation of the cellular

material requests for a DNA test, aimed at comparison of DNA profiles, to stand. Cellular material may, except in case of application of Article 195D or lost under the following sentence, only with written consent of the defendant and the third to be taken. If the third is missing because of a crime, DNA testing can be performed on cell material objects, which were seized from him, or cellular material that is otherwise obtained.

2. The second to fifth paragraph shall become third to sixth member.

3. A paragraph is inserted which reads:

2. The judge appoints an expert attached to one of the in general administrative designate laboratories, with the mission to conduct the DNA test. The expert reports to the judge a reasoned report.

4. In the fourth paragraph (new) is "under the second paragraph replaced by: under the third paragraph.

5. In the fifth paragraph (new) is "the prevention, detection, prosecution and adjudication of criminal offenses" by "the prevention, detection, prosecution and trial of criminal offenses and to establish the identity of a corpse" and delete the phrase " the College personal hearing protection, " .

H

Article 195b, first paragraph, "Article 195a, third paragraph, first sentence, fourth and fifth paragraph is replaced by: Article 195a, fourth paragraph, first sentence, fifth and sixth paragraph.

I

Article 195D is amended as follows:

1. In the first paragraph, "cellular material will be taken for a DNA test." Replaced by cellular material is taken for a DNA test under Article 195a, first paragraph, if he refuses his written consent. Articles 195a, second to fifth paragraph, 195b and 195c shall apply mutatis mutandis.

2. At the fourth paragraph, added a sentence which reads: In case of important reasons, the DNA testing to be performed on cell material objects, of which the accused have been seized, or cellular material that is otherwise obtained.

J

Article 195th deleted.

K

Article 195f is amended as follows:

1. In the first paragraph, "The judge can" read "The judge may in the interest of the investigation" and "the unknown suspect." Replaced by "unknown unknown suspect or victim. Article 195a, second paragraph, shall apply. "
2. In the fourth paragraph, "in case of a crime" as follows: in case of suspicion of a crime.

L

After an article is added to Article 195f, which reads:

Article 195g

1. Notwithstanding Article 21, fourth paragraph, of the Data Protection Act, the judge in the interest of the study recommended that a DNA research is aimed at establishing kinship. Article 195a, second paragraph, shall apply.
2. Cellular material that under this Code, the Data Protection Act or the Act to study DNA-convicts decreased for identifying and processing a DNA profile may be used to establish kinship. Cellular material from a known person who is not suspected of a crime, can only be purchased with his written consent and used to establish kinship.
3. The DNA test can be performed only in cases of suspicion of a crime for which the legal description of eight years imprisonment or more is made and one of the crimes described in Articles 109, 110, 141, second paragraph, under 1 ° , 181, under 2 ° , 182, 247, 248a, 248b, 249, 281, first paragraph, under 1 ° , 290, 300, second and third paragraph, and 301, second paragraph, of the Criminal Code. If a DNA test under Article 195a, first paragraph, leads to the establishment of kinship, the judge that result in the preliminary research use.
4. For general administrative arrangements can be made about the arrangements of the DNA testing.

ARTIKEL II

Article 2 of the Act is condemned by DNA analysis as follows:

1. In the first paragraph, "under Article 151a, first paragraph, second sentence, or 195a, first paragraph, second sentence, of the Code of Criminal Procedure, or under Article 23, first paragraph, a, of the Law personal protection "as follows: under the Criminal Code or the Data Protection Act.
2. The second to sixth member shall become third to seventh member.
3. A paragraph is inserted which reads:

2. If the DNA profile of a person that is processed in accordance with the Code of Criminal Procedure, should be destroyed, it remains nevertheless incorporated under the first paragraph, introductory words, if the person is convicted of an offense defined in Article 67, first member of that Code and the Public Prosecutor has ruled that it is reasonably likely that the processing of his DNA profile may have significance for the prevention, detection, prosecution and adjudication of criminal offenses by the offender. The order of the Public Prosecutor referred to in the first paragraph, introductory sentence, remains in that case continues.

4. In the sixth paragraph (new) after "the prevention, detection, prosecution and adjudication of criminal offenses" inserted "and determining the identity of a corpse" and delete the phrase "the personal hearing protection College,".

5. In the seventh paragraph (new) is "the second and third paragraph" replaced by the third and fourth paragraph.

ARTICLE III

This Act shall enter into force on a date to be determined by Royal Decree.

And ordain that the Gazette will be posted and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it will take.

Data

De Minister van Justitie,