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Act on DNA database for use in criminal justice

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Submitted to the Ministry of Justice and the Police 23 November 2005.

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The Justice and Police

By Royal Decree of 2 July 2004 it appointed a committee to evaluate the changes in the rules of the central register of DNA profiles. The committee would, among other things consider whether there was a need to extend the right to collect DNA samples so that it was the same as for fingerprints. Moreover, the Committee consider whether the right to register DNA profiles should be extended, and the rules of search in the register.

The report proposed that the rules of a DNA registry is adopted in a separate law. A total sample can not see that privacy concerns in the crucial level is an obstacle to expanding access to register persons in the DNA register. However, there is disagreement about where the lower limit for registration should go. The majority believes that there should be sufficient that it is serving a sentence for an act that can lead to imprisonment, while the minority opinion that the limit should be the actions that can lead to six months in jail.

Otherwise, it is proposed that a number of rules that are currently included in the take-leinstruksen in respect of searches, etc., Included in the new law on DNA database. The majority suggests that it be allowed to retain biological material that has been used to produce DNA profile.

Bergen / Oslo, 23 November 2005...

1 Summary

The government decided by Royal Decree of 2 July 2004 to appoint a committee to consider whether the right to collect DNA samples would be consistent with the power to obtain fingerprints. Moreover, the committee consider extending the DNA registration for several types of cases than under the current regulations is limited to more serious forms of crime, and whether a charge should be sufficient for registration. Moreover, the Committee consider rules about the search in the register. The committee's mandate is entirely reproduced in Chapter 2.

Chapter 3 contains an overview of what DNA is, including the use of current DNA database and the processing routines used to register.

In Chapter 4 it is given an overview of current law. As shown in this chapter, the central DNA database established by the Act of 22 December 1995 No. 79, and legislation has since only been subject to minor adjustments.

Chapter 5 contains an account of foreign law. Developments in other countries are clearly in the direction of extending the power to register persons in the DNA register. England has the most far-reaching rules in this area.

The committee reviews stated in Chapter 6. The committee proposes that the rules of a DNA registry governed by a separate act instead of the provisions included in the Criminal Procedure Act. The consensus of the committee that your privacy is not an obstacle to expanding individual circuit that can be registered. The majority suggests that there should be sufficient for registration that a person imposed a criminal sanction for an act that can lead to imprisonment. The minority believes that the limit should be for violations of the penal provision which has a penalty of six months imprisonment. A joint committee believes, however, that actions that are issued fixed penalty notices for, should provide a basis for registration.

The Committee further proposes that it imposed a sentence abroad for an act that would qualify for registration in Norway, will be registered based on the foreign decision.

The rules on track registry should be continued without change reality. It is proposed that no changes in the rules of search in the register. The committee proposes that information from the register may be disclosed to foreign law enforcement authority, such practices also are today.

There is disagreement in the sample of biological material collected for DNA analysis can be kept for the production of DNA profile. The majority believes that the objective of upgrading the register in line with technological development, indicate that such material can be kept by the person who conducted the analysis. The minority believes that the danger of misuse of the material suggests that it be destroyed after the profile is obtained.

Procedural rules relating to the use of the current registry is largely maintained. There were, however, that the decision that a person shall be registered with the police, with the right of appeal to the superior prosecuting authority.

Finally, the committee proposes certain changes in the provisions on enforcement measures. Collection of DNA samples is currently so far little intrusive, the Committee suggests that this is regulated in a separate provision in the Criminal Procedure Act.

The financial and administrative implications of the committee's proposals are contained in Chapter 7. The majority's proposal is estimated to cost just under 100 million the first year, then the annual costs associated with the DNA record should be about 50 million.

Chapter 8 contains comments on each provision, while the committee's draft bill is included in Chapter 9.

2 The mandate

Palette to assess changes in the rules of the central register of DNA profiles were appointed by Royal Decree of 2 July 2004. The reason for the appointment said Justice Ministry:

"The objective of an effective crime fighting may indicate that there should be a further opportunity to take DNA samples and to register and search for DNA profiles in the central register of DNA profiles than current rules allow. While traveling expansions in power to detect DNA profiles questions about the conduct of the privacy and legal rights of those being recorded.

The members of parliament Jan Arild Ellingsen and André Coot City proposed in Doc. No. 8: 41 (2002-2003) changes in the Criminal Code to expand "access to the use of DNA evidence in criminal cases." The proposals were submitted to the Ministry of Justice and Minister of Justice stated in a letter dated 24 January 2003 to the Justice Committee that it was desirable to await the attorney general's assessment of the issue before the Ministry took the position of their right to register DNA profiles should be extended. Director of Public Prosecutions had at that time organized an internal working group that looked at the investigation of cases the perpetrator is unknown, including the use of DNA profiles. It was also stated in the letter to the Committee that there could be reason to look into the rules of search in the DNA register.

Justice Committee stated in Recommendation. No. 148 (2002-2003) that it will await the Justice Department's assessment before the final decision on the registration rights should be extended, but stated that it has a "positive attitude" to such an extension.

Based on the work of the internal working group was the Attorney General in a letter to the Ministry of Justice 18 March 2003 decided that it should appoint a committee to, among other things, to consider whether criminal law should be amended so that the power to detect DNA profiles in the identity register is expanded. Office of the Attorney General also pointed out that there may be a need to consider changes in the rules concerning the storage of DNA traces. "

The Committee received the following mandate:

"The committee will consider whether there is a need to amend the current rules on the registration and search DNA profiles in the central register of DNA profiles and the collection of DNA samples. The committee will consider both the legislative and regulatory changes.

In particular, the Committee shall consider whether - and how - a by law and regulation to send caller should:

- extend the right to take DNA samples, for example, so that access is the same as the fingerprint,
- open to register DNA profiles in several types of issues (today allowed the registration of DNA profiles of persons convicted for violation of Penal Code section 14 (general dangerous crimes), 19 (sexual offenses), 22 (assault) or 25 (extortion and robbery)),
- do charge a sufficient condition to sign his or her DNA profile (currently requires a final conviction),
- change the procedural rules for registration and searches in the DNA register.

The committee will also consider whether it is desirable to revise the rules of search in the DNA register (Prosecution Instructions § 11a-4, which was amended by regulation 24 October 2003 No. 1261).

The committee will also consider the need for changes in the rules concerning the storage of trace evidence, etc.. (Prosecution Instructions § 11a-6).

The changes proposed by the committee, the committee must consider whether the current privacy and due process guarantees of the Prosecution Instructions will be sufficient. Finds range that these guarantees will not be sufficient, shall propose amendments that will ensure the privacy and the individual's legal rights are safeguarded in a satisfactory manner. The committee's proposals must be in accordance with Norway's obligations under international law.

If the selection is in favor of changes to the design proposals for legislation and / or regulatory text. The proposal shall be designed in line with the Ministry of Justice guidance Lovteknikk and lovforberedelse (2000).

The committee must consider the economic and administrative consequences of its proposals. At least one proposal will be based on the same resource, see Section 3.1 studies instruction. "

The composition of the sample was as follows:

Professor Asbjorn Strandbakken, Bergen, Director.

Police Superintendent at KRIPOS Vagleik Antun, Arnes.

Director of Inspectorate George Apenes, Fredrikstad.

First Prosecutor Ingunn Fossgard, Oslo.

Attorney Mette Yvonne Larsen, Oslo.

Lecturer at the Law Faculty, University of Bergen, Jan-Inge Raanes, has been secretary of the committee. Chapter 3.1. However, written by Chief Engineer Solveig Jacobsen and senior engineer Bente Mevåg the Institute of Forensic Medicine, University of Oslo.

The committee was given a deadline to submit its recommendation to the latest 31 December 2005. During the work the Committee has held six evening meetings, as well as a two-day meeting. Furthermore, the Committee visited KRIPOS and Forensic Medicine Institute. In addition, sample 3-6. January 2005 on a study trip to London, Southampton and Wilmslow

3 DNA and the use of DNA-index during the investigation of criminal cases

3.1 About forensic DNA

3.1.1 Introduction

In 1985, described the English professor Alec Jeffreys that areas of the human genome (human DNA molecule) shows the variability of hitherto unknown type and scope. This knowledge combined with modern

technology has resulted in an effective right genetic tools, the identification of biological traces and safe determination of paternity / kinship.

Now - 20 years after DNA was introduced as evidence in criminal cases means - is DNA analysis is widely accepted. Comparison of DNA profiles from traces of profiles from the person's well-established practice in the criminal context worldwide. Most Western countries have databases (in Norway called DNA registers) of profiles of former convicts or suspects and profiles from traces in cases with unknown offender. Search these databases for already significant contribution to solving many types of criminal offenses, and this effect increases as the number of registered profiles increases.

3.1.2 What is DNA?

DNA is found in all our nucleated cells, ie in all body organs, the skin and mucous membranes and to a greater or lesser concentration in all body fluids. It may therefore be possible to analyze DNA from blood and sædspor, saliva transmitted tracks (cigarette butts, bottles, Finland caps, etc..) And hudoverførte tracks (on equipment and surfaces in general).

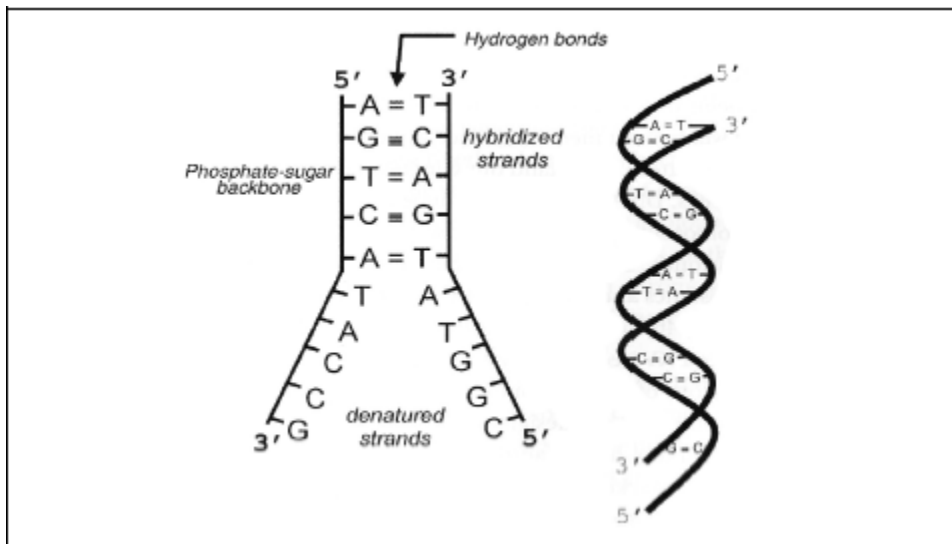


Figure 3.1 DNA-DNA molecule

DNA is a relatively stable molecule. Under favorable conditions to the DNA in a groove in a dry environment or in frozen form the basis for efficient analysis, even after many - sometimes thousands of - years. But exposed to varying humidity and heat, the molecule could also be quickly destroyed. Empirically, the biological traces in the form of blood stains on the butts and the like could stay in very long time. But biological clues that hudavsmittende the tool or the like, will eventually lose the DNA remaining from previous users, as new users from removing the old track and allocate their own.

3.1.3 What is DNA?

3.1.3.1 Structure

DeoxyriboNucleic Acid (DNA) is the chemical name on the DNA molecule. DNA in the cell nucleus contains all information about an organism's development and appearance, and often referred to as the core DNA. In addition, the cells DNA outside the nucleus, mitochondrial DNA (mtDNA), see section 3.1.3.6.

DNA molecule consists of two complementary strands that are made up of four different nucleotides / base pairs that abbreviated A, T, C and G. The human genome is composed of approx. 3×10^9 nucleotides, with four possible variants at each position, this provides an almost infinite number of combinations, which in turn gives rise to the biological diversity of the people.

An average human body consists of approx. 1×10^{14} cells that all have identical DNA to the cell that occurred when egg and sperm fused together. So we have two versions of our DNA, one inherited from the mother and one from the father, organized in the nucleus as chromosome 23, one pair of sex chromosomes. This is why we at the DNA analysis are two versions (called alleles), one from each parent.

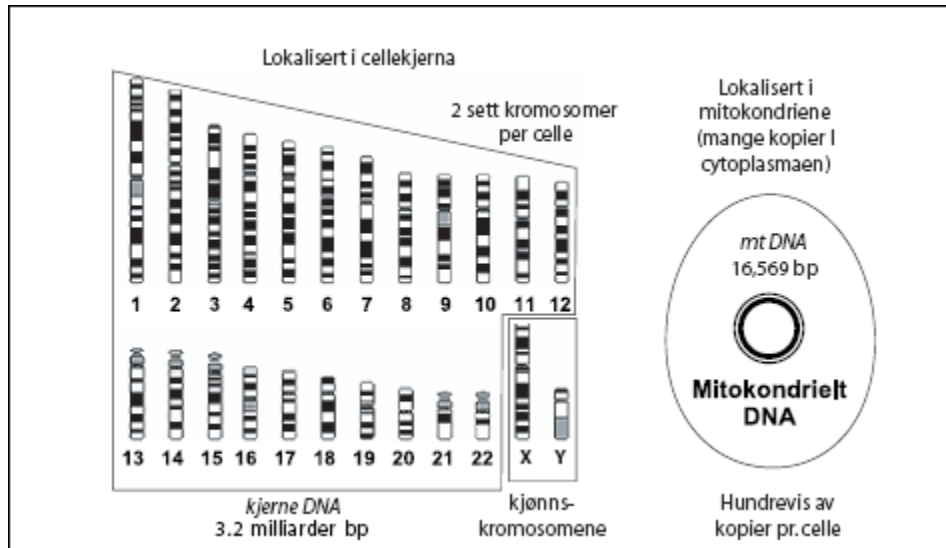


Figure 3.2

The human genome / chromosome consists of 5% coding and 95% non-coding regions. The coding regions are known as genes. The non-coding regions contain, as far as we know, no information about the individual in the same way as the coding. It is in these regions has been demonstrated areas of individual variation, and it is these areas, markers, used for DNA analysis. However, it is only approx. 0.3% or approx. a million of nucleotides that vary between people and makes us unique individuals. Identical siblings has identical DNA.

3.1.3.2 Genetic variation

The observed two types of variation in the DNA molecule, sequence or single nucleotide variation and length variation.

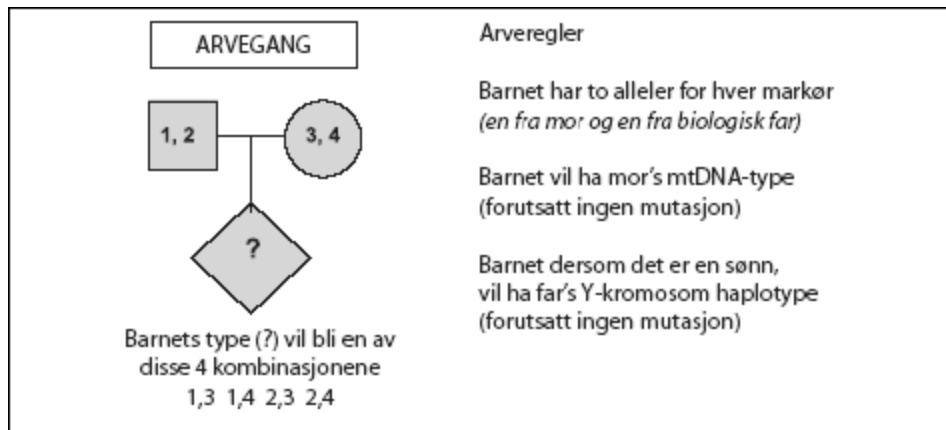


Figure 3.3

DNA analysis used in forensic genetics today is based on areas that show length variation. This consists of a short sequence of nucleotides, preferably 2-5, where the number of repeats varies between individuals. Such areas with inherent variability is called STR's (short for Short Tandem Repeat, short tandem repeats). For each STR is the core sequence differing nucleotide composition (different order of A, G, T and C). The variation between individuals is limited for each STR. A combination of information from multiple gives a result specific to the individual with the exception of identical siblings.

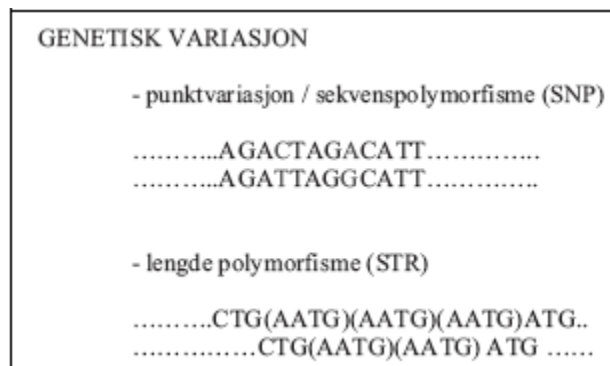


Figure 3.4

As a parallel to the ordinary fingerprints were called "DNA fingerprinting" is used, but currently used DNA profile. DNA profile is not an unambiguous expression, and it must therefore always be given the STR-are included in the profile. DNA profile of individuals with certain identity is called identity profile in contrast to profiles from biological material called track profiles.

3.1.3.3 Nomenclature

It is registered thousands of STR's and which is used in the analysis are indicated by designations that describe their "geographic" location on the DNA molecule. For example, an FGA STR found in a non-coding region of the gene for the protein fibrinogen A on chromosome No. 4, while the STR-one D16S539, the 539 marker found on chromosome No. 16 where D stands for DNA and S sequence.

For each marker, we mentioned two versions (alleles) of our DNA, one inherited from the mother and one from the father. These figures are given names that indicate the number of repetitions of STR's core sequence. Are there two different numbers this means that the alleles we have received from your mother

and father are different, there are two equal numbers, it means that you have received the same allele from both parents.

3.1.3.4 Selection of STR's for the right genetic analysis

STR is to be effective for the identification, ie the probability that two individuals will have identical profile, should be minimized. This is achieved by choosing STR's that either have many alternative versions / alleles (polymorphic STR's) and none of the alleles are dominant in frequency and / or by combining information from many smaller polymorphic STR's. The STR-one is using, will also be demonstrated in small quantities and / or partially damaged DNA. They must also give clear and reproducible results.

The research work is now performed using commercially developed STR-multiplexer where multiple STR-are analyzed simultaneously. International cooperation has led to recommendations that all multiplexer will contain seven common STR's. It is also drawn international recommendations for quality assurance / standardization of laboratory methods. In Europe a SGM +, a multiplex with ten different STR's and one marker that recognizes both sex chromosomes, are analyzed simultaneously.

STR-one each from approx. 10 to approx. 20 variants (alternative numeric options). Based on population surveys can be calculated that the probability that two unrelated Norwegians will have the same DNA type, varies from 8.1% to 2.7%, respectively. STR-one THO1 and D2S1338. The probability that two unrelated people have the same DNA type in the SGM +, is equal to the product of individual probabilities for each STR, usually less than 1×10^{-13} (one of ten trillion). A combination of the most commonly occurring types for each STR has a theoretical rate of 1×10^{-9} (one in a billion).

A SGM + profile provides only information likely to identify persons / biological traces, revealing no other individual-specific information than gender. One cannot tell if a person has genetic contributions from specific ethnic groups. STR-one acts as an effective identification tool in all studied populations.

3.1.3.5 Y-chromosome-specific markers

Also on the male sex chromosome, the Y chromosome, are STR's with considerable individual variation, but the Y-information is inherited without change (except for mutations) from generation to generation. A man thus has the same Y-profile as his father, his brothers, his sons and other male relatives in unbroken father's line, and Y-profiles are not approximately the same identifying power matching STR profiles. Such analysis can still provide valuable information for the samples with DNA contributions from several individuals and both sexes.

3.1.3.6 mtDNA

In addition to nuclear DNA has cells many mitochondria in the cytoplasm containing a small, circular DNA molecule, mitochondrial DNA (mtDNA) consisting of 16 569 nucleotides in which a non-coding region shows a certain degree of individual variation. This variation created by sequence or single nucleotide variations, ie, a nucleotide is replaced with another.

MtDNA is inherited from mother to child, and all the relatives, both women and men, in the same unbroken maternal line will have identical mtDNA sequence. MtDNA profiles are the same as Y-profiles little identifiable effect, but can still be a valuable tool in some cases where samples contain very little DNA, such as bones, teeth and hair shaft.

3.1.4 How to analyze the DNA?

3.1.4.1 Methodology

By DNA analysis measured the length of the DNA fragments that vary between different individuals (selected STR's). This is a process that takes place in several steps. It starts with the extraction / recovery of DNA from the cells, where a number of other substances must be removed before analysis. This process does not distinguish between human DNA and non-human DNA that can also be found in trace evidence. Next step is quantitation / quantification of human DNA in the samples. Followed by PCR (Polymerase Chain Reaction) is a laboratory method where you copy the selected STR is the DNA strand. The copying process is necessary to get sufficient amount of DNA for analysis / fragment length determination. DNA fragments are separated and detected, in most laboratories use today capillary electrophoresis this.

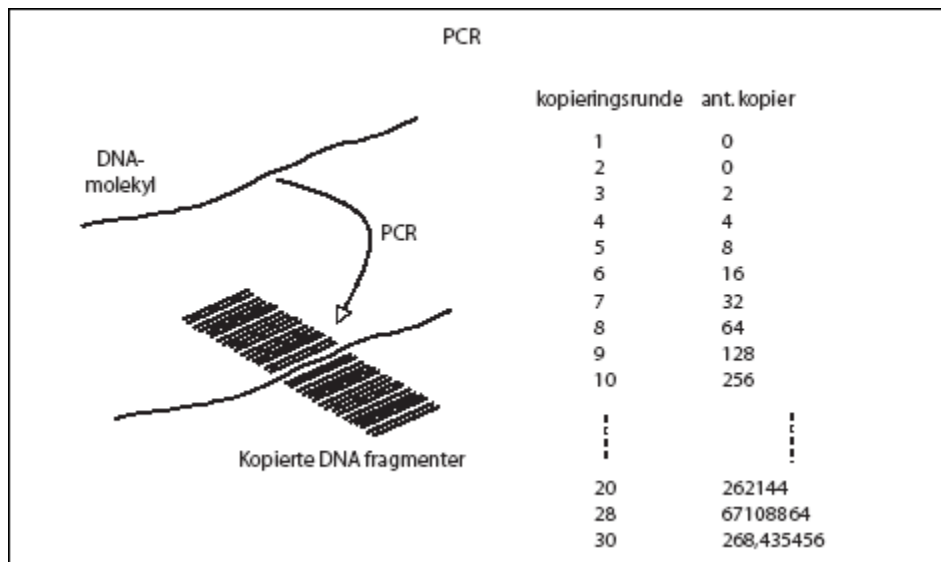


Figure 3.5

The method enables analysis of small amounts of / partially decomposed material and several STR's can be examined in the same PCR process (multitplex).

3.1.4.2 Profit Management / software

Type of results processed using a computer program which the length of the fragments is measured and converted to the number of repetitions of the core sequence for the STR. For example, when the result of an STR show "12, 15", it means that the sample contains two versions / alleles of which one with 12 and the other with 15 repetitions of STR's core sequence. The overall result, a DNA profile therefore consists of a series of numbers and indication of gender. This is the result format that is easy to handle with respect. databases.

DNA from trace evidence and those analyzed in two separate processes, and comparison of the profiles can only be made after the treatment result.

It's called a "match" when two profiles are compared, for example a track profile and an identity profile, are identical.

3.1.5 expertise

When the quality of DNA profiles should be assessed, there are two conditions that require special skills; shared profiles and mixing profiles. Shared profiles are sections where it fails to detect type-only alleles of all STR's. The reason for such profiles may be that it is small and / or poor DNA in the sample.

In those cases where the analysis ends up with a shared profile, the identifying power of a match between a person's profile and the incomplete profile will always be reduced. The reduction of the statistical weight will be in direct correlation with how many STR-one is fail to type.

For some samples, one can obtain a full profile by increasing the sensitivity of the assay. Such sensitivity analysis requires special measures to avoid contamination with DNA that does not originate from the track itself, and the results must be used with caution in comparison with other profiles.

Mixture Profiler is because more than one person has contributed with DNA in the sample being analyzed. They differ from normal profiles in that the at least one STR is more than two alleles (numbers). Such profiles create interpretation needs and often require special statistical treatment.

The assessment of "difficult" mixed profiles and shared profiles requires a high degree of expertise, theoretical as well as practical. The typing of samples containing DNA from several individuals or small, or degraded DNA, there may be technical phenomena that affect the analysis process. Such tests often kind of results that are difficult to judge with respect. the result reflects all alleles in the sample. According to accepted professional criteria must be carefully assessed to determine whether there are grounds to apply them and what weight they can be given. These conditions must also be taken into consideration when such track profiles are compared with other profiles.

It should however be noted that the false results that may receive and incorrect judgments you do, always leads to false exclusions in that you get a profile that contains one or more errors (usually lack of numbers). Since the DNA profile each of us can be considered unique, not a mistake typing result in a track test gives a false match.

Whether shared profiles and mixing profiles are suitable for registration in a database, on a scientific basis considered in each case.

3.1.6 Contamination

Contamination is used in the context of non-intentional mixing of "foreign DNA", ie DNA unrelated to the crime. How tilblanding may be due to addition of DNA under the protection of the track, in the course of treatment by the police and / or in the laboratory.

PCR method's sensitivity and ability to type very small amounts of DNA means that the necessary precautions must be taken to prevent and detect contamination. Therefore, reference samples from anyone who may have been in contact with / treated the material could be analyzed. If contamination occurs, it can give type of results that are not applicable or lead to false exclusion of a person in relation to a track.

3.1.7 Weighting of DNA results

3.1.7.1 Statistics (frequency, frequencies)

The frequency of each type for each STR are mapped according to analysis of samples from a large number of unrelated Norwegian women and men. These figures form the basis for statistical calculations.

If, for example, has a track profile with an overall frequency in the order of 1×10^{-9} , which would put the probability that two unrelated people will have the same DNA profile is 1 in 1 billion. Put another way, there are 1 billion times more likely to get this result if the slot is allocated to this person than it is allocated by a random unrelated person.

If implicated in the cases are related to each other, must be taken into consideration when statistical calculations to be made since the relatives will have genetic similarities, for example, parents and children always have an allele / number common to all STR's, siblings will be several public figures than cousins, etc.

3.1.7.2 Proof of Value

Matching DNA profiles between a track and a person means neither more nor less than the DNA in the track comes from the person. The significance of this evidence, will be entirely dependent on the relevance of the track, for the offense, a court must decide.

3.1.8 The Forensic institutt's work

3.1.8.1 General Forensic Medicine Institute's work

Forensic Medicine Institute has a national function with respect. right genetic studies.

In 1987 it started a project with support from the Ministry of Justice to test the newly discovered DNA technique and its application in both paternity and track cases. The project, which proved to give good results were maintained and established as a routine method in the first instance for use in selected cases. As case volume increased, it was just genetic operations divided into two units: the section for family genetics (paternity cases) and Section of biological traces (criminal cases).

From 1992 to 1996 there was a gradual transition to the PCR methodology so that they were able to exploit much smaller amount of trace evidence while the police looked the usefulness of the analysis and send more cases to study. Further development of the PCR method's sensitivity has made typing of new track types as possible, and drug cases is a separate item on the type of case statistics from 2001. Case development by type of case listed in the table below. Number of cases received in 2004 amounted to less than 1% of the total number of reported cases in the categories of vandalism, drugs, sex and violence and other crime for profit (figures from Statistics Norway).

Table 3.1

Tracker	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994
Sexual abuse	319	274	280	251	233	229	255	206	190	215	177
Murder / mist.dødsfall	58	50	44	41	54	44	49	59	39	49	25
Body-damaged.	91	81	90	66	71	76	75	69	67	50	36
Theft / robbery / burglary	1142	316	214	146	109	108	69	49	68	88	35
ID cases (deaths)	33	21	23	8	17	13	15	18	17	11	10
Drug issues	293	161	95	51							
Other	192	82	54	48	39	32	28	22	26	23	13

Total number of cases	2128 *	985	800	534	523	502	491	423	403	404	296
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* Including 7 cases from Iceland

DNA work was funded in part by billing clients (approx. 50%) and partly funded by the Ministry of Justice (approx. 50%). While the department in 1992 decided only to use DNA techniques in the analysis of paternity cases, the responsibility for these transferred to the Ministry of Children and Family Affairs (BFD). BFD now fund section for family genetics in its entirety. The work of criminal cases continued however with the established funding, but with a trend in which the principals in recent years have covered a larger part of total costs. The overview in Table 3.2 shows the number of submitted cases from the various districts for the past few years.

Table 3.2 Number of cases by police districts

	2002	2003	2004
College Police	34	45	49
Asker and Bærum Police District	15	37	70
Follo police	21	25	45
Gudbrandsdal police	1	5	11
Haugaland and Sunnhordland pd.	32	52	78
Hedmark Police	30	53	87
Helgeland police	4	13	35
Hordaland police district	41	73	401
Island	26	19	27
NCIS	50	40	65
Middle Hålogaland police	20	21	25
North og Romsdal pd.	13	12	43
Northern Buskerud Police District	11	11	16
Nord-Trøndelag Police	7	9	22
Oslo pd., Krim.tekn. Section	154	139	210
Oslo police	44	90	102
Rogaland police	59	79	144
Romerike police	21	24	58
Salten police district	12	4	19
New Jersey Police	10	7	24
Sunnmøre police	6	16	41
Svalbard			2
Southern Buskerud Police District	36	18	52
South Trøndelag police	28	38	74

Telemark police	16	29	98
Troms police	18	34	107
Western Finnmark Police District	3	10	16
Vestfold Police	46	28	44
Vestoppland police	7	4	12
Østfinnmark police	11	10	6
Østfold police	24	45	138
Total:	800	990	2121

Hordaland pd sent in 2004 in most cases for investigation which constituted approximately 2.5% of the total number of reported cases in which DNA analysis should be considered as part of the investigation. Otherwise, the table shows large variations between the different police districts.

The investigations of these cases is twofold where first part consists of the detection / monitoring of biological trace evidence and DNA analysis constitutes the second part. DNA profiles from trace samples are compared as possible with the profiles of persons implicated in the matter, insulted, accused and any witnesses. The case is answered and a report sent to the client. At the same time be sent to track profiles that match some personal profiles of DNA registry if the profile meets the agreed quality requirements.

In 1 half of 2005, 1509 cases rise to 5,643 tracks samples of which 352 profiles were submitted to DNA register. These are mainly from cases characterized as everyday crime and about. 40% of these matched the profiles of registered persons (who are convicted of serious crimes).

Table 3.3

1. half	2005	2004
Number of track profiles sent DNA register	352	224
Hits track / registered person	139	45
Hits tracks / tracks:	51	15
Hits in search of the accused person to trace the register	41	9

As shown in the table above, the search of traces far more hits than the search of new personal profiles (accused persons) amounted to approx. 1000 in 1 half of 2005.

3.1.8.2 International cooperation

Representatives from the department participates in ENFSIs (European Network of Forensic Science Institutes) DNA group and EDNAP (European DNA Profiling Group). These groups act as an advisory body to Interpol, and has as one of its goals to contribute to the standardization of DNA analysis procedures in the European context. EDNAP also has responsibility for carrying out research and development of new methods. ENFSI also organizes frequent tests of its members, known as "Proficiency tests". Cooperation in ENFSI implies that members commit themselves to implement a quality assurance process in terms of laboratory procedures (accreditation).

3.1.8.3 Quality Assurance

Analytical sensitivity requires high awareness in relation to the way work is done in order to avoid / minimize the risk of contamination. DNA analysis is performed today in special decorated premises with strict labor and control in terms of sample processing and performance control. These procedures are established in accordance with the guidelines there is international agreement (ENFSI).

3.1.9 Future Development

Biotechnology is a field of rapid development, but because DNA databases worldwide is based on STR's, it is difficult to envisage a comprehensive change in the near future when it comes to analysis technology in forensic genetics. The development right now concentrate on optimizing existing multiplexer, if possible to analyze even smaller amounts of DNA, automate large parts of the analysis process and apply new markers, STR-er/SNP-er (see Section 3.1.3.2.), Which provides additional information .From investigative hold is also a desire to include bio-geographical markers, ie markers that characterize a person's origin, and markers describing phenotypes, ie, markers that can characterize a person (hair color, face shape, etc.). So far it has not succeeded in finding such markers suitable for routine use in criminal cases.

Future development will likely cause the existing STR-is going out of use, but new ones appear as a supplement and that the number of STR's in the DNA databases will increase.

3.2 The use of DNA index

3.2.1 Technical solutions, etc..

Pursuant to strpl. § 160A cf. PTI. Chapter 11a, it was in 1999 established a DNA database at the Central Criminal Police. a first decision on the registration was issued in 1998. The profile of this person, however, was first registered in December 1999. This is altering the standard for typing of DNA profiles 1 December 1999. All trace evidence that was secured and typical of the breed at an earlier date, had to types again in accordance with the new standard if it were detected in the DNA register.

With the establishment of the DNA registry, the American CODIS database solution selected as the technical solution. 2 CODIS owned and is in continuous development by the FBI. The database has by Norwegian standards unlimited capacity then this solution is not only within each state, but also used as the database solution across the different states of the United States. Most European countries have also been chosen CODIS. This must be viewed in conjunction with the FBI, offering all the software free for the respective governments.

CODIS contains DNA profile and a unique analysis number. Data solution is established in a closed network where only those who work with DNA registry has access. Three people have now access to the database.

Registry will be without value if the DNA profiles that are registered can not be connected to a person or thing. It is therefore established a procedural solution in Lotus Notes the analysis code used in the register be used with either personal or case information. Lotus Notes is part of the police network, but only a few people have access to DNA databases with personal information (name and ID number) if the person is registered in the DNA index, the basis for registration, case information (criminal code) and the analysis numbers. Access to Lotus Notes solution does not imply access to the profiles.

3.2.2 Procedures relating to the registration

When New NCIS receives a decision on registration of a person's identity register, the decision, before the registration is made, be qualified to determine whether there is factual or procedural errors in the decision. Information as stated in the decision checked against police records to ensure that personal information is correct, that it be referred to the appropriate sentence, court date and court and that the sentence provides for a basis for registration. Discovered the error, given the feedback to decision-making prosecutor so that the decision may be addressed and upheld or reversed / retracted. New Criminal Police of trying never the prosecutor's decision, cf. PTI. § 11a-2, fourth paragraph.

Just made the quality of the sample forms that police districts send new NCIS on the basis of a decision by a prosecutor. It performed a routine inspection of all personal data that are reported, whether there is agreement between the trial and decision, and that it has been carried out identity checks on the person who submitted the sample.

When a profile of known identity received from the Forensic Medicine Institute for registration, made the control with respect. if it is received sample form from the police districts with the same analysis code. If this is missing, both the sample form and the decision be requested before the profile is imported into the register. If it is already imported a profile with the same analytical number or the profile already exists in the registry, this will be uncovered and corrected. Identical profiles will be due to the capture sample of identical twins, or that the sample is of the same person several times. Other abnormalities, such as errors in each locus, will also be revealed here, and reported back to the Forensic Medicine Institute.

When a profile of known identity is registered in the DNA register, this will be noted in the Central Criminal Police and Data register (SSP) by adding the year when the registration took place. Procedure corresponds to that of photo and fingerprints. This way you ensure the greatest possible extent that a person already registered in the DNA register should not have to submit a biological material several times. To ensure that there is a discrepancy between the DNA registry and note in the Central Criminal Police and Data Register, made it a regular electronic control between registers.

For all those who either should have been registered pursuant to the PTI. § 11a-2, first paragraph, or should have been registered according to PTI. § 11a-2, second paragraph, cf. same provision last paragraph and the attorney general's Circular No. 2 / 1998, is actually registered, it will be regularly prepared lists sent police districts for follow-up.

Anyone who believes that there is no basis for registration may appeal to the Attorney General, cf. PTI. § 11a-5, second paragraph. If a complaint is sent New NCIS this without delay, be forwarded to the Attorney General.

3.2.3 The number of registered profiles

When the Bureau of Crime Investigation established forensic DNA database in December 1999, there was little knowledge of the police and prosecutors on both the registry and legislation. This resulted in relatively few people who met the criteria for registration were decided on record. Parallel to the protection and management of biological material relatively unknown to the police. A perception of low value combined with the relatively high costs associated with the analysis of biological material, was part of the reason that the use of DNA was little priority by the police districts.

Public Prosecutions ordered that DNA detection should be given priority, leading to increased focus and a change in this situation. At 30 September 2005 the decision that 9338 people will be registered in the DNA register, of which 7,544 are registered with the DNA profile.

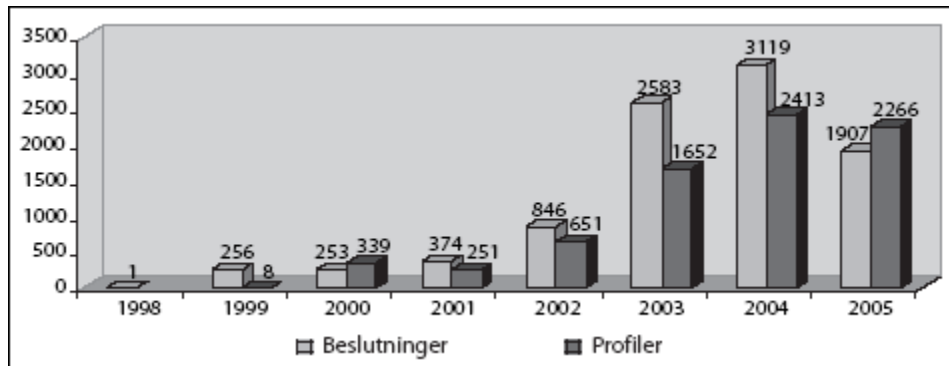


Figure 3.6 Development with respect. number of decisions and profiles of the identity register at 30 September 2005.

Status at 30 September 2005 means that about. 97% of the cases are registered in accordance with PTI. § 11a-2, first paragraph, and all *can-cases* for PTI. § 11a-2, second paragraph. *Can-cases* is limited to cases where the Attorney General has stated that it should normally be made registration, cf. PTI. § 11a-2, fifth paragraph and national lawyers Circular No. 2 / 1998.

In comparison, there are 30 September 2005 registered 1,329 profiles belonging to persons of unknown identity (track). The majority of these profiles derived from what must be described as everyday crime.

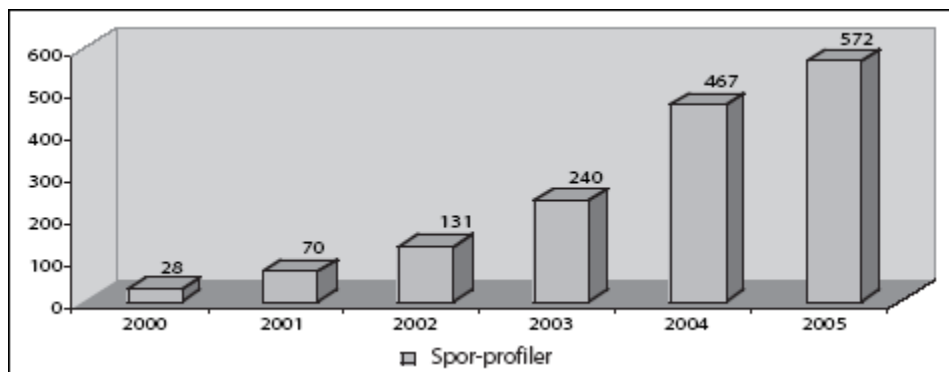


Figure 3.7 Development with respect. number of profiles in the track index at 30 September 2005. Discrepancies between the number of track profiles (1329) versus the sum of the number per year (see graphs above) is mainly due to redevelopment because the profiles are no longer belongs to a person of unknown identity.

3.2.4 Search in the registers - the scope and procedures

Increase in the number of profiles in the identity register and track the registry has also resulted in a significant increase in the number of hits - both between different cases and where the tracks connected to the person.

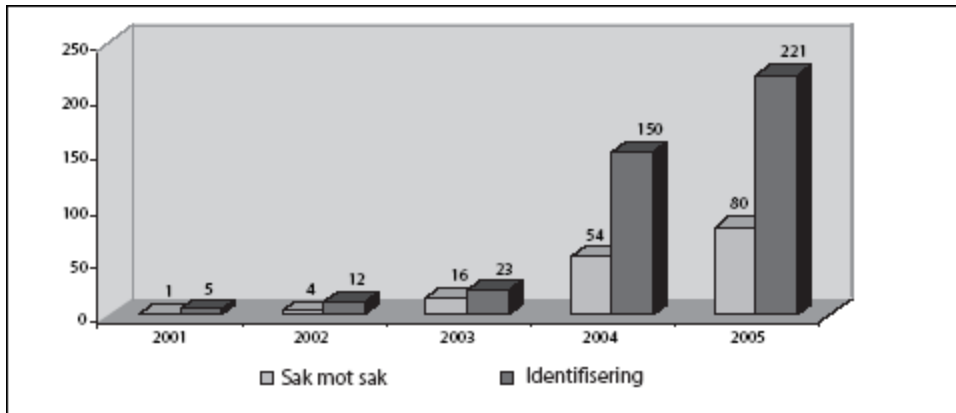


Figure 3.8 Development with respect. number of hits - both the case against case and identifications at 30 September 2005.

In addition, identifications made by the Forensic Medicine Institute on the basis of concrete evidence against the person and for that reason not reported to the Registry.

The results shown in this publication is based on the searches made in the DNA register. These can be manual or automatic. Manual search involves a specific profile applied on request. A typical example would be a DNA profile obtained from foreign law enforcement authorities.

An automatic search means that the profiles that have not previously been applied, be applied to all profiles in the database. Such a search will reveal whether the profile is secured at multiple crime scenes (case against the case), identify a profile whose identity has been unknown (track linked to the person), and determine whether a person has submitted the DNA sample twice (person to person) in that it provided a false identity. The latter is so far not revealed in Norway. There are, however, identical DNA profiles in the identity register, but this has a natural explanation in that identical twins have been recorded.

When the profiles That Belong to the Accused Submitted for search, cf. PTI. § 11a-4, third paragraph, the personal information will be checked against police records before the profiles sought to ensure that the submitted profiles actually belong to an accused, thus permitting its search. New NCIS has introduced this routine since in some cases applied form of the reference sample of victims / witnesses, and not try form that is prepared for the recording of the trial of the accused. In this way, it ruled that the profiles belonging to victims / witnesses who incorrectly sent New NCIS, is applied to the register.

It also controls the profile associated person of unknown identity (track profile) received for registration in the trace register. All case information is checked against police records to ensure that the conditions for registration are present. If there is doubt about the foundation, contacted police to track profiles are not registered on an improper basis. After a track profile is detected, the police automatically a letter which stated that the profile is registered and that the police must provide feedback if the conditions for registration should be terminated, for example, if the profile can no longer be assumed to belong to an unsolved criminal cases, cf. PTI. § 11a-3, first paragraph.

Any results - whether it is between different track profiles or by a person profile associated with a track-bar - reported to the Forensic Medicine Institute that performs quality assurance, and who then prepares an expert report that is returned New NCIS. New NCIS will then prepare a cover letter along with the Forensic Department report sent to the relevant police.

If the hit involves the identification of a track profile, track profile is automatically deleted from the DNA index in parallel with the dispatch of the said report as track profile no longer belongs to a person of

unknown identity, cf. PTI. § 11a-3, first paragraph. It is apparent from the accompanying letter that the deletion of the track profile has taken place. A copy of the cover letter and report will document recorded in the track affair held at the New NCIS.

Does the hit is a connection between the different tracks (cases), it will be sent identical letters for attachments in the respective criminal cases. Track profiles are not deleted as they continue to belong to a person of unknown identity.

3.2.5 General New NCIS 'working practices and management of DNA register

New NCIS since the establishment of the Bureau of Crime Investigation in 1959 been given a management responsibility for several of the police central records, such as fingerprint records, photo index, the Central Criminal Police and Data register (SSP), etc.. Once it was decided that New NCIS would be the registrar for the DNA index, were planned and later implemented a number of quality assurance measures so that this register could be managed in accordance with applicable regulations.

The Personal Data Act § 13 is the basis for the information that must be set to a DNA registry. The technical information security is maintained throughout that all activities that occur in the DNA register is automatically logged so that unauthorized, as authorized but inappropriate use, soon to be revealed. Other information maintained by the establishment and prepared documented procedures that safeguard the confidentiality, integrity and availability in accordance with applicable regulations. The procedures have a high degree of notoriety so that all activity in hindsight to be controlled. Similarly, the established procedures for reporting deviations. To ensure that existing procedures are updated and followed, made it a regular audit of these in accordance with personopl. § 14 It is thus established and prepared documented procedures that safeguard requirements of internal audit.

It is also established procedures that describe access to the Registry. Once a user is granted access, all activity in the register will be automatically logged so that this must be possible to be traced.

3.2.6 Deletion of identity profiles

Deletion of personal data and DNA profile of deaths made by the New NCIS every month sent a file from the population register. The file contains the identity of the deceased, and the file attached to the DNA registry so people are reported dead marked with the date of death and cleared no later than two years after the data are reported dead, cf. PTI. § 11a-6, sixth paragraph. Documentation that procedures are followed, are automatically logged as part of standard procedures for the management of the register. That this procedure is followed, will therefore be available later.

If a verdict on which the registration was to be transformed by the resumption, the new NCIS, once such notice is received, ensure that their DNA profile and personal information will be deleted.3.2.7 Cooperation with foreign law enforcement authority

It is also established procedures for receiving track profiles of the foreign police. Such tracks recorded for a period of up to five years. Registration out over five years requires a new approach. Foreign police are routinely notified of the track profile will be deleted so that the request for continued registration can be made. This ensures New NCIS foreign track profiles that no longer has any relevance is deleted from the register, while the relevant track sections still remain.

Enquiries to foreign law enforcement authority of the search or the registration of Norwegian track profile in a foreign registry, made when the responsible police urge New NCIS about this. Such requests are made through Interpol.

3.2.8 Access to records

Procedures for access have been prepared in accordance with personoppl. § 18 The distinction between transparency of a general nature (statistical information) and access by the individual, cf. pol. § 24 To prevent unauthorized persons to gain access to the information recorded, submitted a request for access above the police where he lives through personal attendance and legitimation. Police District will forward the request to access new NCIS treating this before response returned to the address he gave in person at the police district.

4 Current law

4.1 Introduction

This chapter provides an overview of the provisions on the collection of biological samples and DNA profiles in criminal investigations, and recording of DNA profiles in the national DNA registry. In the presentation, the following term with this meaning: Biological material - sample from the suspect or DNA traces from a crime scene. DNA analysis and DNA profiling - the production of DNA profiles.

4.2 The right to collect biological samples from suspects for DNA profiling

4.2.1 Introduction

To clarify the biological material is uncovered during the investigation of crime stems from a person who is suspected in the case, it is necessary to obtain biological material from person to present his or her DNA profile. This requires basically physical examination, and the Criminal Procedure Act, meaning a form of investigation that can be implemented by force. Physical examination is regulated in strpl. § 157 In addition, authorize strpl. § 160A body examination of the defendant and others who will be registered in the DNA register, see Section 4.3.2.5. below.

4.2.2 Physical examination of suspected

4.2.2.1 Some starting points

By strpl. § 157, first paragraph states that the person with reasonable grounds suspected of an act which the law can lead to imprisonment, may be subject to investigation body when it is believed to be of importance for the information of the case and does not appear to be a disproportionate interference. There may be blood and performed other tests that can be done without danger or significant pain.

Several types of biological material can be analyzed to produce a DNA profile, but today it is generally saliva containing oral cells used. **1** The biological material collected by a swab taken to the inside of the suspect's

mouth, and thus captures saliva and oral cavity cells. This is a little intrusive form of physician sampling. More invasive diagnostic methods are used only if the suspect demanded that the other biological material to be analyzed. There are further provisions for the implementation of body survey protection instructions Chapter 10 [2](#)

4.2.2.2 Conditions for physical examination of suspected

Criminal Procedure Act § 157 imposes several conditions for compulsive sampling. Overall, the terms expressing the connection required between the offense and the person who wanted investigated. Furthermore, provision is considered from two different angles. First, it provides the legal basis for intervention that the principle of legality in the first place requires a legal basis in formal law. Second, the provision specifies limits on how police can proceed to collect biological samples from suspects. Unless there is special authority can not police collect biological samples from suspects other than the strpl. § 157 prescribes. [3](#) This limitation does, however, not applicable to the extent that the collection of biological material does not represent a procedure that requires statutory authority.

To make physical examination is due to the requirement in § 157 that there are "reasonable grounds" for suspicion of an action that can lead to imprisonment. Identical conditions apply to the arrest after strpl. § 171, and case law in relation to this provision assumes that suspicion must have some strength and build on the concrete and objective circumstances. This case law is also of importance for the interpretation of § 157 Furthermore, said the Supreme Court in ruling in Rt. 1993, p. 1302 that it is sufficient that there is probable. Basically, it must therefore be more likely that the suspect has committed the criminal act, than that he has not done so.

DNA sample, which was appointed in 1992, studied for the first time the need to use DNA analysis in criminal cases. In NOU 1993: 31 pp. 24-25 considered range of the requirement to strengthen the suspicion should be the same at the DNA profiling as a result of general sampling. The committee concluded that it did not want to violate the criminal procedural basic principle that coercive measures should only be applied to it as there are reasonable grounds to suspect a criminal act. The committee felt that although a lower threshold could help to streamline the investigation, the interests of the individual's physical freedom, integrity and the rule of law more weighty. The Ministry endorsed this view in the Proposition. No. 55 (1994-95) p. 7-8. The rules about fingerprints, however, represent an exception to this basic principle, in that it only requires suspicion of an action that could lead to a custodial sentence, cf. strpl. § 160

Criminal Law § 157 requires in addition that the suspicion is an "act which the law can result in imprisonment." First, the suspicion include all the conditions for criminal liability. Specifically, exemptions, however, by § 157, third paragraph, if the penalty cannot be imposed because of low age, psychosis, loss of consciousness, developmental disability or condition that caused the suspects do not have guilt, cf. criminal code. § 44 and § 46 [4](#) In these cases do not affect the criminal the need and rationale for the efficiency of investigation work through DNA profiling of the person. Second, mark the condition of imprisonment the lower limit in which cases bodily examination may be performed: penal provision which includes the action that the person suspected of, must have a sentence that gives the right to impose a custodial sentence.

In the preparatory works to the Criminal Procedure Act of 1981, it is assumed that the physical examination by force should only be used in drug cases and elsewhere with great caution, see, among other settings. O.

37 (1980-81) p. 23 Legislators must be deemed to have waived it by later amendments, as long as bodily study is to obtain a DNA profile. This was done primarily through the adoption of § 160A and the amendments to § 157 of the Act of 22 December 1995 No. 79 The amendments are based on a clear assumption that the body examination for DNA profiling is not only used in particularly difficult or serious cases. A limitation of access to physical examination when the requirement of a custodial sentence is met, possibly anchored in the other requirements of § 157, or in the general provisions such as § 170a.

Further a condition for conducting body survey is that it "believed to be of importance for the information of the case", cf. § 157, first paragraph. The condition expresses a principle that applies generally and for all coercive measures - coercion should not be used to a greater extent than is necessary for the elucidation of the case. The survey "is believed to be of importance for the information of the case" if it is objective and concrete evidence for it. Usually, the condition must be met if it is secured DNA traces under investigation. In ruling in Rt. 2004, p. 1222 joined the Supreme Court to the Court of Appeal had concluded that the statutory requirements were met when it was "secure things from the scene." Further stated Appeals Committee that there is a requirement of a preponderance of the survey will be important for elucidation of the case.

If it is discovered DNA traces linked to the criminal act, there will be a presumption that sampling of suspects is likely to be important for elucidation of the case. Although there is a confession or other evidence that suggests that the case is adequately lit, a DNA evidence could have as much value as evidence that the investigation should not be refused on the grounds that the matter has already been adequately informed.

The last requirement in § 157, first paragraph, is that sampling "does not appear to be a disproportionate interference". The provision says so explicitly that applies as a general rule for all restraint after strpl. § 170a. Collection of biological samples for DNA profiling, however, requires that a modest intervention in the suspect's bodily integrity that what the clear rule would not be disproportionate.

4.2.3 The consent can be physically examined

It will not always be reasonable grounds for suspicion against all persons who the police want to DNA profiling. DNA profiling of a wider circle of persons called "screening" and must be based on volunteerism. "Screening" can be very useful for the police, especially since it allows a rapid exclusion of innocent people with some form of connection to the offense. In addition, the fact that even individuals who voluntarily leave their DNA profile, from time to time prove to be the perpetrator.

During the investigation of the so-called Forde case in 2004, 1,234 people agreed to submit biological samples to the police. Institute of Forensic Medicine analyzed the material, and sample number 1064 turned out to match the tracks that were found on the victim. DNA profile belonged to a person the police had not had the binoculars before, but had consented to DNA profiling when police routinely summoned him for questioning because someone had seen him in Forde murder weekend.

It follows from strpl. § 157 second paragraph of that biological material can be obtained from the person consenting, without regard to whether there are reasonable grounds for suspicion against him. The consent must be in writing and meet the general requirements for a valid declaration of intent. New NCIS, in

cooperation with the Institute of Forensic Medicine prepared a sample form where the person voluntarily submit biological samples for DNA profiling informed about the impact and scope of a consent.

4.2.4 Compulsive Sampling requires that basis the court's ruling

4.2.4.1 Introduction

Criminal Law § 157, fourth paragraph states that "[u] ten suspects consent to investigation only made by order of the court." When the courts rule ensured suspects certain procedural guarantees. Fifth paragraph, however, the prosecuting authority competent to decide "[d] ersonom purpose of this study might otherwise be forfeited."

Experience shows that the exception clause is used quite often. It is a practice that is hardly in accordance with statutory requirements and designs. The suspect or the accused cannot get rid of or destroy their biological material. Suspects will not be able to do anything that implies that "the purpose of the survey ... forfeited" pending the court's ruling. If the body survey purpose other than to produce suspects DNA profile, for example, to determine whether he or she carries the material from a victim or crime scene, it will however be different. Then having to wait for the court's ruling before the survey conducted, could result in the suspect time to get rid of it be obtained. It is aimed at the latter situation that the exception in § 157 fifth paragraph is designed. In these situations is not the purpose of the investigation body to ensure the suspect's own biological material. It is on this basis, § 157 fifth paragraph should be interpreted when the question is whether the order of the prosecuting authority can take the place of the court's ruling. The clear rule is that compulsive sampling for DNA analysis can only be implemented after the court has found that the statutory conditions are met.

4.2.4.2 Court test of the validity of the study body

The court's ruling on compulsive body examination may be appealed in accordance with the Criminal Procedure Act's general rules, cf. § § 377 et seq If the prosecution has made the decision, brought the matter before the court. This is not expressly stated in the law, but imposed by the applicable generally when a decision on the use of coercive measures taken by the prosecuting authority, cf. including strpl. § 208 That the decision be appealed or brought before the court has no suspensive effect unless the authority whose decision contested or the Appeals Court decides, cf. strpl. § 382

Another question is whether the person has voluntarily given biological material, but later claims that the will of the declaration was invalid, may refer the matter to the courts for criminal procedure or civil procedural rules. **5** Basically gives consent a civil basis for sampling. The clear rule is that when the government bases its authority to conduct operations against the individual in such a basis, is testing the legality of civil process rules. On the other hand, issued a consent in connection with the investigation of crime, and sampling is one of criminal law enforcement agents. In addition, it is common for suspects yesterday with the physical examination so that the court's ruling is not necessary. If the person cooperates with the police have a weaker position than the one who gets to fight back, put the law up to the tiny affordable solutions. Concern that the suspects should not benefit from trainers investigative work, and consideration to the impact of the regulations, therefore indicates that even those who voluntarily submit biological samples to bring the matter before the courts by the Criminal Procedure Act.

Criminal Procedure Act contains no general rule about the justice of "coercive measures" that are carried with the person's consent. In § 208, second paragraph, however, included a provision that the person has voluntarily disclosed a thing of seizures, may require the issue of seizure shall be maintained brought to justice. This provision should be considered as a manifestation of a general principle that the person consenting to the implementation of "coercive measures" may bring the matter before the courts by the Criminal Procedure Act.

Body examination is an action that a court decision for invalidity cannot redo or eliminate its consequences. It may still be important for the person concerned has confirmed that the legal basis for the study was invalid. In addition, the justice in certain cases could have implications for the style of the DNA profile and recent evidence in the case. A court decision that says that the conditions were not met, it will basically mean that the investigation cannot be made or that the collected material can not be analyzed.

It must still be evaluated separately on a verdict or ruling of invalidity is to prevent the biological material that is collected is used to represent the person's DNA profile. The analysis of the biological material is not specifically regulated by law or prosecuting instructions. It may be natural to understand § 157 so that it is based on the assumption that the result of sampling only be analyzed when the collection was legal. Another question is whether it is required pursuant to law to analyze the biological material from a person with known identity. The biological material has already been obtained, and the analysis is not an infringement of that person's physical integrity. In addition, the current law is fairly liberal with respect to the use of evidence obtained illegally. Grossly simplified, one can say that the evidence police have obtained illegally can be presented in the case if the evidence does not involve a renewed or continued violation of the illegality of the person affected in the first place. Thus, one can ask whether the production and subsequent use of DNA profile will be a new or continuing violation to the person who has been subjected to an illegal sampling. The answer to this is NOK quite obvious - to follow up an illegal body survey to produce a DNA profile that consists of information about their genetic inheritance material, is a new or continuing violation. Illegally obtained evidence referred to in part by *Andenæs 2000 I* p. 268 ff, *Beach Hill 2003* p. 181 ff, *Aall 1995 s. 299 et seq* and *Aall FS-Smith* p. 957 et seq

4.2.5 DNA profiling of victims, witnesses and other

It can be of great importance for the investigation work to be able to compare DNA traces from the scene or the victim with the DNA profile of victims, witnesses or others. Generally, victims and witnesses cooperating with the police and give biological material voluntarily. Often, other people who police want to promote, give a sample voluntarily, see Section 4.2.3. of. In some cases it will still exist a need to investigate other than those who agree or with reasonable grounds suspected of having committed the offense. Criminal Procedure Act does not provide authority to use force against the victim, witnesses or others who are not suspected in the case. This was explicitly stated by the Appeals Committee of the ruling in Rt. 1997, p. 1719.

4.2.6 Storage of DNA profiles and biological material under investigation

In continuation of the prior biological material and produced a DNA profile, questions arise about the further handling of the evidence means. If the DNA profile matches with DNA traces from the scene included the course as a key evidence in the case, and stored as the other evidence. Until the matter is finally settled stored biological material in a similar manner.

Another question is what will happen to the collected biological samples and DNA profiles that match with tracks from the scene. Neither the Criminal Code or the Prosecution Instructions contain provisions on this. Initially, the first when the case is closed may be possible to say what evidence that is of importance. On the other hand, says strpl. § 213 that if the proof turns out to be irrelevant to the case, it shall be returned or destroyed. The provision must be regarded as a manifestation of a general rule also applies to biological material and DNA profiles, regardless of whether they are made voluntarily or by force.

Although a DNA profile is not identified with tracks that are revealed in analysis time, it may appear new tracks in the case. It would therefore be advantageous for the further investigation work on biological material and DNA profiles can be stored until the investigation is completed. In consent cases, it basically depend on an interpretation of how far agreed ranks. Otherwise, the general rule is that if it can not be demonstrated concrete evidence that the DNA profile or biological material can be important later in the investigation, the police must deliver or destroy them. This is also the best in accordance with the said provision in strpl. § 213, which states that a seizure must be repealed if it is found in the case is finally decided that it "no longer needed for the fitting." With the need for seizure refers here to an objective and specific investigative rationale in that case. In connection with DNA profiling will be the case if such person has status as a suspect even if his or her DNA profile is not matched with tracks in the case. If the DNA profile has been checked against the traces in the case, and the lack of identification is likely to prove his innocence, however, it must be clear that it should be disposed of together with the biological material. This will typically be the case in screening cases.

4.3 DNA register

4.3.1 Introduction

Pursuant to strpl. § 160A, first paragraph, first sentence, cf. fourth paragraph, it created a national DNA database that consists of an identity register and a trail register. Identity Register containing DNA profiles and personal data from individuals with known identities, as well as a reference to the timing and basis for registration. Track Register contains DNA profiles relating to unsolved crimes from persons of unknown identity.

4.3.2 Who may be registered in the identity register?

4.3.2.1 Introduction

Criminal Procedure Act § 160A, first paragraph says that the register can contain DNA profiles from persons convicted for violation of Penal Code section 14, 19, 22 or 25, or attempt such a crime. In addition, it recognizes DNA profiles from people who cannot be punished because of the provisions of the criminal code. § § 44 and 46, or condition that caused the person does not have guilt, cf. § 160A, first paragraph, third and fourth sentences. **6**

The law allows recording only after the case is finally decided. **7** As a rule, the basis for recording a final conviction. The exception is cases where the punishment cannot be imposed because of the criminal code. § § 44, 46 or condition that has caused the person does not have guilt.

Particular issues arising from the registration without the prior sentence. It is appropriate when the prosecutor recommends prosecution against an offender because of age, psychosis, loss of consciousness or

mental retardation at the time of action, or condition that caused his lack of guilt. Criminal Procedure Act § 160A makes no special demands on the police and prosecution proceedings and decision in these cases. The prosecuting authority's decision to discontinue the prosecution on the basis of these conditions of entry rather than a final verdict. In NOU 1993: 31 p. 30 stated that the committee registration should not happen if the prosecutor concludes the matter with regard to the criminal code. § 44 or that person does not have guilt. The committee felt that a court should have found it proven that he is the perpetrator. For persons under the age of criminal responsibility, however, felt the same that the prosecution's decision should be sufficient, and justified it with the lack of alternative decision methods. In such cases it will usually be little doubt that the terms of the criminal code. § 46 is met, and it cannot be any charges against minors. The committee added that the requirement for registration of minors should be the same as for the waiver after strpl. § 69, that is to say that "guilt has been proven." Registration in the DNA index of one in action time was under the minimum age of criminal law thus requires that it must be proven beyond any reasonable doubt that all the other criminal law terms are met.

4.3.2.2 Substantive appraisal of the registration rights

By strpl. § 160A states that only violations of the provisions of the Penal Code Chapter 14, 19, 22 and 25 that can provide a basis for registration in the DNA register. These chapters apply general dangerous crimes, sex crimes, crimes against life, body and health, as well as extortion and robbery. The limitation of the registration rights expresses a deliberate choice of the legislator's side to retain the DNA registry for people who have committed relatively serious criminal offenses. On the other hand, the registration rights regardless of whether the DNA evidence was relevant to the conviction that forms the basis for registration.

Criminal Procedure Act § 160A final paragraph says that "the King may issue rules concerning the implementation of this section." In the PTI. § 11a-2, it is decided that registration "shall" be made in certain cases, while "may" happen in other cases. This distinction should be dealt with in section 4.3.2.3. and 4.3.2.4.

4.3.2.3 Persons "shall" is registered

By PTI. § 11a-2 first paragraph states that persons convicted of a violation or attempted violation of the criminal code. § § 192, 195, 197 and 199, or complicity in such violations cf. § 205, and § § 231, 233 or § 268, cf. § 267 "shall" is registered.

Penal Code § 192 includes rape, § 195 sexual intercourse with children under 14 years, § 197 incest, § 199 sexual intercourse with a person under 18 who are under their care, § 231 grievous bodily harm, § § 233 murders and 268 robberies.

Also clear from the PTI. § 11a-2, first paragraph b, c and d that the same applies to persons who are acquitted or have the case dropped because of the criminally insane, ruling on the transfer to compulsory mental health care, etc.. Or consent. Under this provision, there is no room for discretion on the registration rights to be used.

4.3.2.4 A convicted person who "can" register

By PTI. § 11a-2, second paragraph letter a shows that the persons mentioned in subsection who has committed a violation or attempted violation of the other provisions of Penal Code sections 14, 19, 22 and

25, "may" is registered in the DNA register. In addition, it follows from the second paragraph letter b and c that persons convicted before the Act comes into force and persons who so request can also be registered.

The phrase "can be registered" leave it in the first place to the prosecutor discretion of registration shall be made in each case.⁸ Prosecution instructions add no further guidelines for the assessment. Statements in the legislative history that the registration should be reserved for the more serious offenses, however, of relevance to the premises for the prosecutor's decision. ⁹

The purpose of the DNA registry is the natural starting point for the circumstances that are relevant to the assessment. Registry's main purpose is to facilitate a more effective investigation of criminal acts. Thus, the nature of the offense and serious, subjective circumstances and repetition, elements that can speak for registration. These factors will largely be "objectified" by the prior conviction or decision that is the basis for registration

Director of Public Prosecutions has under PTI. § 11a-2, fifth paragraph, provided guidelines for the exercise of discretion in the circular part II No. 2 1998. In September 2001, also prepared an amendment to the circular of 1998. This circular assumes that registration in the cases specified in § 11a-2, second paragraph, letter a, shall normally be the first intentional violation of the provisions of that Chapter of the Penal Code, if it is sentenced to imprisonment for at least 2 years. Is the person previously found guilty of the same or similar violations, the registration generally takes place if the imposed imprisonment for at least 6 months for willful infringement. The same applies, according to the circular of competition-style traps, provided one of the conditions covered by the provisions of the said section of the Penal Code.

Prosecution Instructions § 11a-2, second paragraph letter b applies to persons convicted of violation of Penal Code sections 14, 19, 22 and 25, before provisions for the creation of a DNA registry came into effect. There is no deadline for submitting an application or complete the registration. On the other hand, there is reason to emphasize the time element in can-cases, if the conviction is set far back in time. Further assume PTI. § 11a-2, second paragraph, letter c that there should be a genuine assessment of whether the persons who so request, be registered. It will rarely be reason to refuse such a request.

4.3.2.5 Collection of biological material from persons who shall be registered

To register a person's identity must register registrar have their DNA profile. If the person's biological material or DNA profile has been used as evidence in the case that forms the basis for registration, or for other reasons have already been in police possession, it is not necessary to obtain new biological material or to produce a new profile. But if the investigation is not obtained biological material must be done to register the person in the DNA register. As at the investigation, this is an interference with the person's bodily integrity and privacy that require statutory authority. At this stage of the case does not strpl. § 157 authorizes the body examination. The legislator has therefore provided a legal basis for compulsive sampling in registration purposes in strpl. § 160A, second paragraph, third sentence.

The law sets the conditions for sampling by force that it can be implemented "without danger or substantial pain." As mentioned yesterday the investigation on a swab taken to the inside of the person's mouth to pick up saliva and mouth cells, and this will probably cause "danger or substantial pain."

4.3.2.6 The prosecutor makes a decision on registration

By PTI. § 11a-2, fourth paragraph states that the prosecutor has the responsibility to decide whether to register DNA profiles in the DNA register. This authority can not be delegated. If you are not in possession of biological material from which shall be recorded, the question arises of who should decide on physical examination. Basically, this is said to be a natural part of the overall responsibility for the records in the DNA registry that is assigned to the prosecutor. On the other hand, regulates neither the Criminal Code or the prosecuting instruction issue. The general rule in criminal law is that the court makes a decision on enforcement action unless the implementation is urgent. There will still be curious about the prosecution's instruction gives the public prosecutor responsible for the registration, without also assigning the authority necessary to carry out registration tasks. Prosecution Instructions § 11a-2, fourth paragraph, must be understood as presumably giving the prosecutor authority to decide on the physical examination, even in cases where it is necessary to use force.

The Ministry's statement in the Proposition. No. 18 (2000-2001) p. 29 supports such an understanding of the legal design and construction, although it may appear that there is no distinction between deciding registration and to obtain biological material. 10 It says that the Ministry does not want a system where the question of the use of force shall be decided by the court. Judicial review was the Ministry's opinion, little of its own when the conditions for registration are detailed elaborate on the law and regulations. 4.3.2.7 Appeal and litigation regarding the validity of the registration according to the PTI. § 11a-5, second paragraph, that anyone who believes that he or she should not have been registered, or who believe that the registry contains incorrect information about them, you can complain to the Attorney General. Management Act, Chapter VI apply to the extent the rules are appropriate.

One question is whether a complaint relevant to the implementation of the registration decision, the so-called suspensive effect. Criminal law is silent on this point, and management Act's general rule that an appeal has suspensive effect is in Chapter VIII, and is thus not covered by the reference to PTI. § 11a-5. But also on non-statutory basis is basically that a complaint does not affect the implementation of the decision. 11 The starting point should be the same in relation to registration in the DNA register. On the other hand, the public prosecutor or the Attorney General's own initiative decide to suspend the registration. This is in accordance with that directive from the Attorney General, where it is found that the complaints in general should not be granted suspensive effect. However, the circular that if it is necessary to obtain biological material, should not sample implemented until the appeal is processed. 12 An appeal against the decision of registration may therefore be directed at the registration in the DNA register, or the obsessive sampling where necessary. If the appeal is given pursuant to this registration is deleted.

If the appeal is unsuccessful he may wish to bring the matter before the courts. The question then is whether it is right to do this, and in case of court processing to take place after the criminal process or civil process rules. 13 Statsadvokatens registration decision is pursuant to the Criminal Procedure Act, and on this basis, it is natural that the court review of the decision's validity also occur under this Act. On the other hand, the registration decision is made after criminal proceedings are completed, and it is therefore outside the core area of the Criminal Procedure Act. Registration decision has actually seen a lot in common with the practice of "normal" public authority, and the general rule is that administrative decisions brought before the Court for Civil Procedure Rules.

The Appeals Committee's ruling in Rt. 2001, p. 402 cited the welcome party that justice was most appropriate for criminal law system, since the rules for registration are set out here. Appeals Committee stated, however, without further explanation that the registration decision is a decision that is not subject to review pursuant to the Criminal Procedure Act. That person may experience burdensome registration was not essential. The claim that a registration decision is invalid must therefore establish a civil lawsuit if he or she wants justice.

4.3.3 Track Index - DNA profiles from persons of unknown identity

4.3.3.1 Introduction

In DNA-register slot register can unidentified person DNA profiles detected "when [they] believed to be linked to unsolved criminal cases", cf. PTI. § 11a-3 and strpl. § 160A subsection. Registration will take place as soon as DNA analysis of trace material is completed and sufficient ties to the criminal act has been confirmed. Responsible for registration is the boss at the New NCIS.

The legislative history states both the committee and the ministry that tracks the register is of such nature that privacy concerns do not rise to limitations in the registration rights. 14 If it is secured DNA traces from an unsolved crime, the registration of the DNA record should be very useful for the further investigation, while it does not involve any intervention to an identified person. On the other hand, one should make certain demands on the tracks that are recorded, so as to avoid the victim and other non-offender included in the register.

4.3.3.2 DNA analysis of biological material from the person of unknown identity

Analysis of biological samples from suspects and to register, is limited in nature and scope to carry out analysis purpose - to present his or her DNA profile. This follows from strpl. § § 157 and 160A. It can neither be produced or recorded information beyond what is in the 11 pairs of numbers / markers as the DNA profile consists of. 15 These limitations are primarily motivated by privacy concerns. Legislators have given police permission to use DNA profiles in the investigation, not to review the analysis of suspected and convicted person's genetic material.

The same limitations do not follow the Criminal Procedure Act for investigation and analysis of seized items. The starting point is thus that DNA traces from unknown individuals can be analyzed to the extent that the police deem it appropriate. A thorough analysis of biological material will be no intervention to a specific person. The investigation related benefits to get the most information about the perpetrator will be large. These roads full up for any misgivings that the police and the Forensic Medicine Institute will have large amounts of information from DNA slot, which can be linked to a particular person if he is identified at a later date.

It is therefore possible to analyze biological samples from an unknown person as far as technology and science make it possible. This is also a field where development is rapid. There is research that soon will make it possible to say anything about including ethnic background, hair color, physical characteristics and diseases of the person that DNA track originates. The police will then be able to draw some kind of "phantom images" of possible perpetrators early in the investigation, and thus have major advantages in the further elucidation of the case.

Although the few restrictions to analyze biological traces found at the crime scene or victim, is not it free up to record the information that the analysis produces. Prosecution Instructions § 11a-3 cf. § 11a-1 says explicitly that only the DNA profile in the form of a combination of numbers and information about finding the location / time, and if the victim's identity, which can be detected in the DNA register.

4.3.4 Search in the DNA register

4.3.4.1 Introduction

Criminal Procedure Act § 160A, first paragraph, cf. fourth and fifth paragraph provides that the King may issue regulations on marketing and use of the register. Such rules are given ip voice instruction Chapter 11 a. By § 11a-1 states that the head of the New NCIS is responsible registrar and only the Registrar or the person authorized to have access to the Registry.

Look in the registry are made in different situations. First, decide PTI. § 11a-4, second paragraph, that the registration of a new DNA profile to be investigated whether there are similar profiles in trace register. Furthermore, the police, prosecutors or courts request the Registrar to seek anonymous DNA profiles from known and unknown persons against DNA register. In addition, it happens weekly automatic search the registry for the purpose of matching profiles for various reasons have not been revealed when the new profiles have been recorded.

The information in the DNA registry can basically only used for the investigation of criminal cases. In the PTI. § 11a-4, fifth paragraph, it is determined that the information from the registry for a specific assessment also may be disclosed for use in research.

4.3.4.2 Search for Identity Register

Prosecution Instructions § 11a-4, first paragraph states that "the DNA profile from any crime scene evidence can be sought against DNA profiles in the identity register." There are no limitations in its capabilities beyond the DNA profile must be linked to a crime scene. There is no reason to protect the already listed in the Identity Register, against his or her DNA profile will be checked against DNA profiles with links to other criminal acts. In addition, the DNA profile from an unidentified same applied to the profiles of the identity register, cf. PTI. § 11a-4, first paragraph. Register, however, cannot be used to establish a famous person's real identity, for example, suspect that he has given a false identity.

4.3.4.3 Search Track Register

Prosecution Instructions § 11a-4, first paragraph states that "the DNA profile from any crime scene evidence can be sought against DNA profiles ... tracks the register." This is important in order to connect several unsolved criminal cases together and to the same offender, and thus streamline the investigation process. In addition, the DNA profiles of the identity register will be checked against the registry tracks both at registration and at subsequent routine search.

During the investigation of a criminal action also arises the question of DNA profiles obtained in accordance with strpl. § 157 can be searched against DNA profiles in the trace register. It is a fact that persons who have committed criminal acts like committing new offenses. By allowing the suspect's DNA profile is sought against any registered DNA traces of unsolved criminal cases will pave the way for a significant streamlining of the investigation. After PTI. § 11a-4, third paragraph, the DNA profile of an anonymous person with a known identity is sought to trace the register if there are reasonable grounds for suspecting that the person committed a criminal act. In addition, similar search carried out if the person consents to it.

4.3.5 Right of access to the data

Anyone who is registered in the identity register shall immediately be notified about it. In addition, any claim stated on the register contains information about him or her, and what that information goes out, cf. strpl. § 160A subsection and PTI. § 11a-5, first paragraph. This is in accordance with general principles and rules for access and contradiction about public records with personal information. In addition, as mentioned above is prohibited to disclose information from the register to the other, except for department approved research purposes. Transparency, contradiction and limitations are three conditions that have been central to the Court has considered whether the public records of personal data are consistent with Article 8 ECHR and the protection of private life.

4.3.6 Deletion from the register

Prosecution Instructions § 11a-6, sixth paragraph states that the DNA profiles of the identity register will be deleted no later than two years after the Registrar becomes aware that the person is deceased. DNA profiles will also be deleted if the convicted person after the resumption of the criminal case is acquitted of the act that provided the basis for registration, cf. § 11a-6, sixth paragraph, second sentence.

4.3.7 Control of DNA register

Registry information for using the methods approved by the Department of Justice. In addition, the Data Inspectorate pursuant personoppl. § 3 cf. § 42 authority to supervise the DNA register. Data supervision skills include assessing whether it shall be ordered where the law so provides, ensure that laws and regulations concerning the processing of personal data are complied with, and that errors or deficiencies in the register is rectified.

4.4 Analysis and storage of biological material

Institute of Forensic Medicine at the University of Oslo is responsible for analyzing biological samples from suspects, consensual, and the venue, with a view to produce a DNA profile to the registration or investigation purposes, cf. PTI. § 11a-6, fourth paragraph. DNA profiles submitted to New NCIS as soon as analysis is completed.

An important question is what will happen to the biological material from suspects, convicted persons and others who may be registered, after the DNA profile is obtained. While the entry in the register is an infringement of their privacy, it can be argued to be somewhat different and more radical of Forensic Medicine Institute retains the biological material. Biological material contains large amounts of information about a person, and as long as it is not destroyed it can be used for purposes other than what is obtained and, at worst, be used by unauthorized persons.

Prosecution Instructions § 11a-6 fourth paragraph states that the biological material shall be kept by the Institute of Forensic Medicine at the University of Oslo. Samples from individuals with known identities should be kept in "de-identified" form. Biological material which has been analyzing the basis of DNA profiles in identity register will be destroyed as soon as the registration of the profile has taken place. Track Material may be stored as long as it is deemed appropriate.

4.5 Public Legal restrictions

Body of investigation, DNA profiling and storage of personal data is regulated in part by the Council of Europe Recommendation No. R (92) 1 concerning the use of analysis of DNA in criminal justice, and the European Convention on Human Rights (ECHR) Article 8 Recommendation is in a legal context, only a recommendation to member states, and no international legal obligation. Norway should however seek to ensure that the parts of the recommendation that has been ratified, will be followed. ECHR Article 8 on the other hand, implemented in Norwegian law by the Human Rights Act of 21 May 1999 No. 30 and to the opposing lead other formal Norwegian law.

Recommendation Article 4 applies to the collection of biological samples for DNA profiling. The provision says that if national law allows biological material obtained without the suspect's consent, it should only happen "if the Circumstances of the case warrants such action." When strpl. § 157 sets a condition that body of investigation "believed to be of importance for the information of the case", it is fully in accordance with the recommendation prescribes. 16 Recommendation Article 8 applies to the storage of biological materials, analytical and DNA profiles. Norway has not adopted this provision, as it was felt that it was too restrictive with regard to the establishment of a national DNA database. Furthermore, the recommendation similar restrictive in relation to the storage of biological material from persons with known identity. The other provisions in the recommendation includes the use of biological material and the analytical result,

authorization of laboratories and computer security, and do not seem to be problematic in relation to the Norwegian regulations.

How the collection and analysis of biological material relates to EMKs protection of private life, has not received particular attention either nationally or at the Convention organs in Strasbourg. In light of the rapid developments in biotechnology, and that it is appropriate to extend the use of DNA profiles in criminal justice, there is a need to look closely at the obligations arising from the ECHR.

For that Article 8 should be able to impose limitations to DNA profiling constitute an interference in the individual "Right To Respect for his private ... Life "by ECHR Article 8 (1). If there is an intervention requires Article 8 (2) that the measure is prescribed by law, promotes the legitimate purpose and are necessary in a democratic society. What is meant by "private life" and thus what is an infringement of rights, it is difficult to say something about the general, but a starting point is to find the Council of Europe Resolution 428 (1970): 17" The right two privacy consist essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity ... protection from disclosure of information not or received by the individual confidentially. "The first question is whether body of investigation with the aim to produce a DNA profile is an interference with the "private ... life". IX against the Netherlands 18 allow the Commission finds that blood test on suspicion of drink driving was an infringement of the right to privacy under Article 8 Survey methods used for DNA profiling are mentioned less intrusive than taking blood samples, and the question is whether it will be important for assessment under Article 8 (1). In case X against Austria 19 Commission stated, however, that even modest body of investigation of less importance is to be regarded as intervention in private life when they happen by force. 20 Since the collection of biological material by DNA profiling is an interference with private life must be the terms of Article 8 (2) be fulfilled for the project shall be conventional terms. There is no doubt that strpl. § 157 and 160A satisfies the requirement that the interference must be prescribed by law. Furthermore, the prevention of disorder and crime a legitimate aim under Article 8 (2). Finally, require Article 8 (2) that the interference must be "Necessary in a Democratic Society." Decisions of Convention bodies have stated that this is essentially a question of proportionality between the need for surgery and its effects on the individual. body of investigation is a modest intervention in the bodily integrity, but it may have great importance for the investigation and prevention of criminal acts. It is hardly doubtful that body of investigation the purpose of DNA profiling is in compliance with ECHR Article 8 The next question is whether the registration and storage of a person's DNA profile in a national DNA database is an interference with private life. 21 IX against the United Kingdom 22 believed the complainant that the police collection and storage of photographs for future identification, was an interference with private life.

The Commission disagreed, and found it essential that the photographs were not disclosed to others or used for purposes other than law enforcement purposes. Probably this is one of nuanced understanding of Article 8 23 *Leander v. Swedenborg* 24 merely provides additional contributions to the determination of the Convention's protection of private life. Leander was refused work that vicarious museum techniques for a marine museum because of his socialist party affiliation. The position was of Swedish authorities considered to be of importance to national security, and after obtaining information from a secret police register was Leander found unfit for the position. Commission crucial importance to the information he was talking about. If it was only the name, address, etc., it was not problematic in relation to Article 8 The Court made on their

side no distinction according to the character. It found that the storage and disclosure of information in a secret police register, combined with the fact that the appellant was not given the opportunity to respond to them, constituted an interference with his private life under Article 8

The range of *Leander v. Swedenborg* is somewhat uncertain. There was no registration of personal data alone which constituted an interference with private life. It was the combination of secret registration, disclosure and lack of contradiction that the sum was the basis for EMDs standpoint. 25 In relation to the DNA profiles can also be added that even if body of the investigation is in compliance with ECHR Article 8 is not necessarily the later use, and convention activities. 26 On the other hand, do not set up ECHR absolute requirement that the individual be given access to all information stored about him or her, provided the information stored securely. *Gaskin v. the United Kingdom* 27 shows, however, that if a person proves that it is very important to have knowledge of the information the public has registered, he may be entitled to access them. The Norwegian rules that are discussed above in Section 4.1 to 4.4 shows that it may be embodied in the DNA register will receive notification of registration and at any time can request what information the register contains. Whether the registration in the DNA registry is an interference with private life under Article 8, therefore, depends on the character and use of the information.

As mentioned, does not contain a DNA-profile individuals specific information about the person's personal or private life. It is only suitable to identify the person, and the DNA profile components are chosen because they do not say anything about personal characteristics. It is against this background doubtful whether a DNA profile itself provides such information about an individual that registration involves an interference with private life. In addition it was stated above that the Convention organs emphasizes the use of personal information is limited to specific purposes, which is also the case for the Norwegian DNA register. Another point is that the DNA profile detected in the DNA register together with information about the basis for registration. The basis for registration will be a final decision stating that the person has committed a criminal act, and this is undoubtedly personal information that it needs to control its use. After this, it is therefore natural to consider registration in the DNA register as an interference in private life by ECHR Article 8, even if the DNA profile itself may not involve any intervention.

ECHR Article 8 (2) requires that mentioned that the interference in private life are prescribed by law. This requirement is fulfilled in the case of Norway through strpl. § 160A and the Prosecution Instructions Chapter 11a. Furthermore, the purpose of registration to prevent disorder and crime, and as you know, this is expressly mention Article 8 Finally, a requirement that the procedure is necessary in a democratic society, which should be understood as a requirement that the interference pursues a legitimate societal needs and are not disproportionate. 28 In this context it is clear that registration of the DNA registry is a relatively modest intervention can be justified by the great benefits register, for detection and prevention of criminal acts. After this, it must be clear that the Norwegian rules on registration of DNA profiles in forensic DNA database in accordance with the European Convention on Human Rights.

5 Foreign law

(See the [parliamentary website](#) for this section)

6 The committee reviews

6.1 Clarification of the mandate, etc..

The committee has undertaken to assess whether the right to collect and record the DNA profiles should be expanded, and the rules concerning the right to conduct searches in the register should be amended. The committee consider the need for changes in the rules concerning the storage of track material. If the committee concludes that there should be changes, it should also consider whether current policy and legal safeguards are sufficient.

There is reason to emphasize that the commission should not consider it to be carried out DNA registration. This assessment was done by the adoption of strpl. § 160A of the Act of 22 December 1995 No.

79 The committee is asked to consider expanding the registry to include something more than a pure identity register. It is further assumed that the register is to be used in criminal justice.

If one ignores the identical twins, a person's DNA profile in practice be a unique person identification: **1** If you have the DNA profile of a person, it will be possible to identify this if the person is registered in the DNA register. If all the people in Norway had been registered, one would come up with the person who deposited the track. Such a database would be an effective tool for investigation of criminal acts, but would also be useful in connection with the identification work in connection with major accidents, such as the tsunami in Southeast Asia 26 December, 2004. The Committee finds that it falls outside the mandate to propose to create such a registry. As far as the committee knows, there are currently no countries that have plans to develop a comprehensive register. **2**

The Committee has noted that there is a discussion on how the biological material can be obtained. **3** The general rules for obtaining evidence falls outside the Committee's mandate, and will, except for the provisions necessary to obtain material for DNA register, cf. current strpl. § 157, second paragraph, and § 160A, second paragraph, not be affected in this paper.

Initially, there is also reason to emphasize that the registration of a DNA identity register is not a criminal sanction. Registration is not defined as criminal under Norwegian law, and such an arrangement will not be considered as a "penalty" under ECHR Article 7, see the rejection decision *Ibbotson against the United Kingdom* from 1998. **4** Registration has no punitive purpose and it will be made administratively by a process that clearly differs from the ordinary criminal process. These are considerations that were highlighted in the rejection decision *Adamson against the United Kingdom* from 1999, **5** in which the registration of sex offenders, in the same manner as in *Ibbotson against the United Kingdom*, was not deemed criminal by ECHR Article 7 Even if one were to find that the registration constitutes an interference in private life, cf. ECHR Article 8 (1), **6** must be based on the same decision could be assumed that this procedure is legitimate under Article 8 (2). Article 8 requires that the procedure established by law. **7** With the rules of confidentiality must apply for this type of information, it may not be a basis for concluding that the record represents an inhuman or degrading treatment or punishment that may be problematic in relation to ECHR Article 3 Since there is no question of punishment, not the prohibition against repeated prosecution brought up to date, see TP 7-4.

6.2 Some legal questions

The current rules on the DNA register is enshrined in the Criminal Procedure Act and the prosecution's instruction. The provision that it can be decided to create a central identity register based on DNA profiles shown in strpl. § 160A subsection. The right to establish a track registry is set out in strpl. § 160A subsection. Rules for collection of biological material shown strpl. § § 157, second paragraph and second paragraph 160A. Supplementary regulations are provided in the prosecution's instruction, including who will conduct DNA analysis, etc.. **8** One may question whether this is an appropriate legislative technique.

The Committee has found that a possible change of the current regulations should be done through a separate law. The Committee has noted that Germany and Denmark have chosen such a solution. Such a law should contain more detailed definitions of what is meant by identity register, track records, who can register, search the registry and the detailed procedural rules relating to the register. Criminal law should in

this context include the provisions on enforcement measures that are necessary to obtain biological material. It is also unfortunate that the central question is only regulated in the regulation level.

This means that the rules are less available. As far as possible the committee avoid the important rules are only included in the prosecution's instruction. Rules importance suggests also that the competence to issue regulations should not be at the ministerial level. To the extent there is a need to draw up regulations to the Act, the Committee therefore found that these should be determined by the King in Council.

6.3 Should the right to register DNA profiles be expanded?

6.3.1 DNA material is an effective tool for research

When to consider extending the right to register DNA profiles are primarily based on the technological developments have shown that DNA has gained increased importance for the investigation of criminal cases in recent years. The more sensational and serious criminal cases, the DNA traces at the scene linked the perpetrator to act. DNA analysis has thus in several cases been crucial for investigating, for example, in Baneheia case in Kristiansand, Bryne thing and Forde case. Increased use of DNA technology may mean that cases are resolved more quickly, thus reducing the length and scope of research. Furthermore, DNA analysis help the innocent may be excluded from a case. Examples of this are found in Anna Lind-case from Sweden where the first one was arrested, was later checked out of the case based on DNA findings at the scene.

The fact that DNA analysis has gained increasing importance, is a trend we see in many countries. During his visit to England in January 2005, received the sample in-depth knowledge of how DNA analysis is used in the investigation. England is one of the countries in the world that has gone furthest in the use of DNA technology in criminal investigations, and there is no doubt that DNA analysis has proven to be a very effective investigative tool. ⁹ This applies not only the serious forms of crime such as murder, rape, etc.. but also the investigation of so-called everyday crime such as burglary and theft car use. The Committee may in principle not see anything that would suggest that you refrain from adopting scientific advances in combating crime. What one must consider is whether the new technology can be used in a way that conflicts with important policy considerations, and if so what action should be taken to limit these negative effects.

6.3.2 Privacy Considerations

If a DNA database can be problematic will depend on what information the register contains. At present, contains the DNA profile that is used to determine the identity of any information on personal characteristics beyond gender. ¹⁰ However, there is no complete overview of how far the DNA technology in the future can read the personal characteristics of a DNA analysis . It can therefore not be excluded that at a given time can be uncovered personal biases, complete mapping of dispositions for diseases, etc. Such potential disclosure categories involves a latent threat to privacy. Compared to current technology, laws and requirements, it is only information that can help to determine the identity that can be registered. The committee can not see that *this* information involves a serious infringement of privacy. Isolation does not currently control any more or other than as also in evidence in relation to fingerprints.

For the relationship to privacy should be worrisome, it is conceivable two scenarios. First, the samples collected was abused by one seeks to extract more information than is required for the safe provision of identity, and secondly, that in the future will have a law that allows for broader analysis than that undertaken in the day. In the general plan can not see the committee that these objections have its

merits. DNA technology is right NOK developing rapidly and will in future offer opportunities as it is now impossible to foresee the consequences of both the political and social ethics. It cannot be excluded that future development of the crime, genetic knowledge and generally agreed social values, will actualize the changes in the regulations. The committee wishes to emphasize that the proposal as submitted, is intended to balance the various considerations and options based on the consensus on the core values of Norwegian society today. The proposal should not be construed as an inducement to or obstruction of the special development directions. However, this has not meant that the committee in its conclusions have chosen to disregard future abuse potential. Recommendation No. R (92) 1 from the Committee of Ministers of 10 February 1992 Section 3 will also set limits for other use, because this recommendation assumes that the DNA analysis obtained for the purpose of investigation of criminal acts can not be used for other purposes. The committee's position is therefore that the production of DNA profiles of persons with known identity may only be used for identification. **11** This should be stated in the Act's purposes.

As to privacy summed up the DNA sample from 1992 this assessment as follows:

"After the committee's opinion, a person register of DNA profiles to the front outlined could not be said to be particularly sensitive. Considering that, with the exception of the theoretical possibility of finding the relationship is not possible to derive another of the register than the data subject's identity, the danger of misuse can be very small. There standing in this register will review the committee does not differ significantly from standing in the judicial records in respect of the degree of sensitivity. "NOU 1993: 31 p. 29, first column.

After the committee's opinion, the trend since 1993 has not provided a basis for other conclusions.

6.3.3 Should charges be sufficient for registration?

Although registration can only occur with the purpose to make an identification, will not reject the sample that can be experienced as unpleasant and stigmatizing to be registered in the DNA register. It can be argued that there should be a certain threshold before a person is registered. A whole range of opinion, however, that the threshold today is too high, but are divided on where the line should go.

The committee is asked to consider whether a charge should be a sufficient condition for registration. After strpl. § 160, cf. PTI. § 11-1 first paragraph, cf. § 11-2 first paragraph may be taken and recorded fingerprints of the person suspected of an offense that can result in imprisonment. By PTI. § 11-2, fourth paragraph states, however, that the fingerprint will be destroyed if he gets his case ended in a way that does not signify that he is guilty. DNA Law Commission of 1992 meant that the DNA registration should be deferred until the matter was finally settled. The committee highlighted the risk that a registered DNA profile inadvertently was not deleted, for example, when a defendant was acquitted. **12** Since 1993, we see that several countries make DNA registration already on the basis of suspicion, and that you do not delete the profile even if the person acquitted. **13** Presumption of innocence in ECHR Article 6 (2) is hardly an obstacle to such a regulation since registration is not punishment. Registration can not be taken as evidence that the government has made manifest that they consider the data as guilty.

As already mentioned do not contain DNA-profile, sensitive personal information, which may suggest that the threshold for registration may be low. Nor will it be difficult to add up computer routines that ensure that those who are not serving a sentence will be erased from the register. The question is whether there is a

need to make such an extension of registration rights. Even today it can be made search of identity profiles belonging to suspects to track registry, cf. PTI. § 11a-4, third paragraph, and the production of DNA profile and registration of all the accused would result in substantial costs. Moreover, the Commission believes that persons who have not settled their case in a manner indicating that he is guilty, should not be consumed in the DNA register. On this basis should not be an indictment in itself be sufficient to be registered.

6.3.4 What are the offenses to qualify for registration?

As to the threshold for registering people who are serving a penalty, does not the majority, *Beach Hill, Antun and Fossgard*, significant concerns with a greater scope to use today's technological possibilities to resolve criminal matters. **14** imposition of a penalty for any offense that may lead to a custodial sentence should therefore in principle could provide a basis for registration.

The fact that the DNA profile from a person who commits a less serious action to help solve more serious crimes, can be illustrated with a case from England were taken DNA sample from a person who was arrested for shoplifting of values for 10 pounds, and the search to trace the registry, there was anything in relation to DNA traces in connection with a sexual assault of two minor girls. **15** As mentioned, it appears that DNA analysis is also of great importance for solving everyday crime such as burglary, car use thefts etc..

Investigations carried out by a working group appointed by the Attorney General to consider the investigation of murder cases with unknown offender, showed that 61% - a total of 330 people - of convicted murderer born after 1950, was previously convicted. **16** Of these 330 people to 42% was registered in the DNA Register according to the rules we have today, while 58% of the defendants would not have been registered. **17** The working group found that 3 of 5 of those who were convicted of murder could have been detected in the DNA register before they committed the murder if it was right to register all those who have committed an act that could lead to imprisonment. If we extended the registration to include all who are convicted for violation of Penal Code section 14, 19, 22, 24 and 25, would half of the prisoners were registered before they committed the murder. The working group concluded that an extension of the right to make DNA detection, dramatically would increase the possibility that an unknown perpetrator could have been recovered in the registry. **18** In its assessment, the group found that a DNA database built using the same principles that apply The fingerprint will make a significant contribution to solve both murders with unknown perpetrator, like other crimes. **19** On this basis, the working group recommended that the provision in strpl. § 160A was amended so that it covered all persons charged with or convicted of an act which the law can result in imprisonment. **20**

Based on the working group's review, says the majority, if there are DNA traces at the scene derived from the perpetrator and the threshold to be DNA detected is low, there is reason to believe that the DNA material in the future may be a more important role in investigation of criminal cases than it is today. The assumption is that the police have sufficient resources to obtain leads from the site, also in the smaller cases. A comprehensive DNA database has little effect if the budget does not allow to obtain leads.

The new Penal Code of 20 May 2005 No. 28 will result in a shift of penalties. **21** It is unclear whether one will have a limit of six months and one year. If the minimum penalty is up to one year, there is reason to believe that multiple offenses may warrant registration will be excluded from a DNA database if the criteria for registration linked with the lowest penalty. The majority believes that the legislators have decided that

the penalty includes imprisonment, there is reason to consider the relationship as far as serious that it should also be able to qualify for registration. The same solution is applied in England and Wales, and is now proposed introduced in Sweden. **22**

Since registration right now is so far limited to the NOK feel stigmatizing to be registered. This applies in relation to those on the lower limit, they are identified with the convicted murderer and serious sexual offenders. But with the low threshold the majority suggests, most of the record should be persons who have committed more traditional forms of crime. There is reason to believe that the feeling of stigma will be reduced.

The majority would also emphasize that the assumption that the police have sufficient resources to obtain leads, the new value of the register will increase the number of persons who are registered. Ad rate in the current DNA database has risen considerably after that as of today to register now registered. **23**

If any person is convicted of an act that may lead to a custodial sentence is registered, the Registry including include drinking and sentenced, convictions for serious speeding, as well as persons convicted of naskeri and vandalism. Although such a threshold means that the violation of several penal qualify for registration, there is reason to point out that the Sanctions Committee has proposed to limit the use of punishment, nor impose administrative sanctions. **24** Furthermore, it is proposed to extend the use of simplified penalty. **25** To the extent that these proposals are followed up, the scope of actions that qualify for registration will be reduced, although this will have particularly adverse effects on the power to solve crimes through the use of DNA register. Such a development would on the contrary, with the strength suggest that there is a higher limit than the current penal provision gives authority to impose a custodial sentence.

When the registration rights related to whether the act can result in imprisonment, it will be easy to determine whether an action qualifies for registration. The majority will warn against a regulation that means that the registration depends on a concrete assessment in each case. This allows for discrimination between the different police districts. The majority suggests that the regulation will help prevent this, while overall prosecutors can easily check that the registration is in accordance with the Act's intention. If, in relation to certain offenses are not considered to be a need for registration, such exempted through the draft Act, § 3, sixth paragraph, where the King in Council is given authority to exempt certain types of cases from registration.

The majority can not otherwise see Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992 Item 8, which requires the storage of analysis results should only take place where there is talk of people who are convicted of serious offenses against the life, integrity and security is an obstacle to such a solution. First, the NOK to the general view on the use of DNA analysis has changed since 1992, **26** and secondly, Norway - together with Denmark, Germany and the Netherlands - made a reservation to meet or not meet Section 8 of Recommendation.

After an overall assessment that the objective of streamlining the investigation weighs heavily, the majority concluded that it should be sufficient for registration that is serving a sentence for an act that can lead to imprisonment.

The minority, *Apenes* and *Larsen*, agrees that access to DNA registration to be expanded significantly from the current arrangement. The minority also agrees that the use of DNA analysis under investigation seems to be a good tool for solving crimes. The minority, however, emphasize that in the general discussion on the use of forensic DNA, many believe that fingerprints and DNA procedural can be treated equally. However, it is important to note that DNA today and in the near future will have a statement power over the determination of identity, such as biological kinship, genetic diseases and characteristics, ethnicity, age, hair color and gender. It would be unreasonable to assume that such categories of information will not be interesting in future investigative work. While the fingerprint registry can retrieve identities, will be the results of the DNA registry could derive additional information of a personal nature.

Systematic monitoring will likely continue to be the most important tool the community can use to prevent the norms and rules. It must be assumed that significant resources will be put in to be able to predict differences - genetic insights will probably contribute to the prophetic accuracy in terms of individual behavior - especially when it comes to violent crime.

After the minority view, therefore, in a total community perspective there is also a view to full rehabilitation falls, be important to clarify what the DNA to be used. The minority therefore proposes the creation of rules for deletion and insight that can work with to motivate convicts to obeying the law. These members suggest that it should be allowed for the right to deal individually also to these questions. In general, there is a lower limit for registration in the DNA register. The minority suggested that this limit is set to imprisonment for 6 months. The repetition should be condemned DNA profile yet to be identified. Referring to the above, suggests the minority that the information in the DNA registry will be deleted after five years of penal convictions for which a sentence of up to 12 months.

It can also be raised as to whether an extension of the possibility of DNA detection can prevent criminal acts, and that knowledge of possible DNA-registration will serve deterrent to the individual offender. The minority opinion, however, that the background for the occurrence of crime in society, and what makes the individual refrains from crime, is complex and that there is no particular reason to believe that a strong expansion of forensic DNA database in itself will affect individual preventive.

The minority considers that the individual citizens still perceive DNA registration as an intervention. One such extension as proposed by the majority will mean a very extensive expansion of the circle of persons who can be registered. To the minority view, this despite the amendment, take a long time before individuals and society are ready to understand DNA-registration as a clean routine. In the meantime, a number of people being imposed sanctions, primarily fines penalties for minor offenses, could perceive the DNA registration as an intervention, and as something unnecessary, even as an integrity violation. The minority has therefore concluded that it is desirable to propose a lower 6-month limit, so that the registration on the basis of more minor offenses are excluded. Such a limit is justified also by several other factors.

The minority considers that, for example, may be offensive to a newspaper editor who neglects his duty to inform the editor's name, and thus is guilty of violation of criminal code. § 429, first paragraph, shall be summoned to the police to give a DNA test, and then be registered in the DNA register. The minority also believes that the same concern is manifest for example, for violations of the criminal code. § 329, where

ordinary citizens participating in legal demonstrations can be fined if they disturb law and order, or does not comply with police requests to move.

The basic idea behind DNA database is not that new crimes will be solved using DNA findings from the scene, as compared with DNA profiles that are registered in the register. The minority considers that other minor offenses, such as the prohibition against letting others carry their own uniform, or the prohibition against selling contaminated food, not offense that by its nature makes it likely that the perpetrator again commit a criminal act.

The minority will also point out that the matter of convenience should also be a minimum of 6 months imprisonment. Several of these violations are not matters on which it initiated an extensive police investigation and how the offender will be summoned to police questioning. Some of the violations will result in fine structural damage without much extensive investigation, which may cause the police will have to summon the offender separately for the DNA sample to be issued. An extensive resource use by the police is not in proportion to the purpose of DNA-registration as a minority sees it.

The minority will also point out that the DNA sample in its mandate, among other things, to propose a solution within the current budget. Such an extension proposed by the majority will result in enormous costs. In this connection may be mentioned that a DNA test currently costs around £ 1,000. per sample. The minority finds it not true that such extensive resources should be implemented to solve the crime.

The minority is also concerned that a major expansion of the rules, as well as to claim presented DNA test should be made facultative, and thus up to each police district to decide, can contribute to the creation of entirely different practices from district to district. First, the economic situation could have important repercussions for the other to each police district's view of whether it will be useful to detect the DNA of the more minor cases could also be significant. The minority finds it very desirable that it be opened for differential treatment of citizens in this area. The minority is aware that even today, where the limit for registered DNA is reserved for serious offenses, there exists a somewhat different enforcement from police to polititdistrikt.

A total sample, however, concluded that the offenses it has issued fixed penalty notices for, should provide a basis for registration. If all the offenses that can lead to imprisonment should be able to lead to registration, will be talking about very many people. A number of trivial traffic cases and minor smuggling cases are settled by fixed penalty notices. [27](#) The Committee believes that the costs of getting this person team into the registry, will exceed the gains. It can not be ruled out that more people will hesitate to adopt a simplified fine if this were the basis for registration. When the case is found to be determined with simplified procedures, the voice on matters that are considered to be less severe. This should have the consequence that the refusal to adopt the writ is not eligible for registration even if the case is decided by court. What matters is that the relationship is by its nature is regarded as suitable to be settled by fixed penalty notices.

Under current law, cf. strpl. § 160A, first paragraph, third sentence, and make registration of persons that can not be sentenced to punishment because of the provisions of Penal Code § § 44 and 46/strl. 2005 § 20 In such cases it may be appropriate in different types of sanctions, cf. criminal code. § § 39 ff / criminal code. 2005 § § 40 et seq and the criminal code. 2005 § § 62 et seq Committee sees no reason to change this regulation.

It can not be excluded that some want to be registered in the DNA register. It may be a matter of a person previously convicted of an act by the current legislation would qualify for registration. The like in 1990 was convicted of rape, may be subject to investigation if it is committed another rape in the area they live. If it is found DNA traces on the victim or the scene, they can be ruled out by the tracks connected to the register. Under such circumstances, the Commission believes that such requests should be complied with. The Commission will therefore propose a rule for voluntary registration. Those who have registered voluntarily, should be able to request deletion if he no longer wishes to be registered. **28**

6.4 Registration on the basis of foreign judgments

If a person resident in Norway commits a crime abroad, the question arises whether they should be registered in the DNA register. The Committee believes that if a person abroad commits an offense in Norway would be eligible for registration, it should be possible to register the person in the Norwegian register if they have a connection to the land. There may be talk of a Norwegian citizen on vacation who commits a sexual assault against a minor. It can also be the case that such action is or has been committed abroad by a foreign national who is resident in Norway.

Several alternative connections to Norway may be appropriate when to limit individual circuit which shall be recorded. One could, for example, limited entry to Norwegian nationals or persons resident in the kingdom. To limit the registration to Norwegian citizens will in light of the current mobility of labor within the EU, obviously be inadequate. After the committee's assessment will not settlement be a good option. After utlendl. § 12 first paragraph, the settlement permit is granted when a foreigner has resided in this country for three years. However, it may be required to register people at an earlier date. The Committee has therefore fallen on that there should be sufficient that a person has a residence or work in the kingdom. This allows for a Swedish citizen living in Sweden, but who work in Norway, can be detected in the DNA register.

Registration on the basis of foreign judgments, may in some cases raise difficult questions. In some countries there may be drakoniske penalties for matters not criminal in Norway, or that of us can only be punished with fines. The starting point is that it only acts that would qualify for registration in Norway that will form the basis for DNA registration here. This means that not only can see the penalty in the penal provision that infringed abroad, or the punishment meted. When the majority has proposed that the threshold for registration is so far low that it only required that it is serving a sentence for an act that can lead to imprisonment, the NOK problems in relation to foreign judgments will be less. If they had set the limit at three or six years, or linked to specific sections of the Penal Code, to registration on the basis of foreign judgments required significant administrative resources.

Decisions regarding registration on the basis of foreign judgments, should be added to a central unit. The committee noted that the King 29 April 2005 established a national public prosecutor for combating organized crime and other serious crimes. The King in Council should consider whether it is appropriate for this office will also be responsible for deciding the registration on the basis of foreign judgments.

6.5 Track Register

Besides the identity register is today established a track registry that contains the DNA profile of unknown persons believed to be related to the criminal action. The committee proposes any substantive change in these rules, but believes that the regulation of trace register should be included in special. Track Your registry will include be central in relation to search from identity register, and it is therefore natural that the two registers are regulated in the same Act.

Committee emphasizes the need to avoid people who have no connection to the criminal action, is recorded in the track register. 29 There may be talk of the DNA profile of the owner of the car that has been subject to theft, or there may be others in the household who has allocated slot. The decision on whether a DNA profile to be in the slot register must still lie with the Registrar, but this should be reviewed by the court. It should therefore be organized routines in order to avoid such registration, for example in the form of first obtaining the reference sample of those who have legitimate access to that property constitutes.

6.6 Searching the Register

A total sample believe that regardless of the limit set for registration, the samples obtained on the basis of biological material obtained from people under investigation pursuant to the draft § 160A subsection, be applied to the trace register. The profiles that are registered in the identity register, must be sought to trace register. This is convenient if a person is convicted of an act that has resulted in registration, later committing new offenses where there is provision for DNA traces. When these are added into the slot register and searched against the identity register, the case can get a quick clarification.

Profiles of persons of unknown identity that can be assumed to be related to an unsolved criminal case, should be applied to both registers. The track can be sought against the identity register has already been mentioned: This may contribute to a quick clarification. But it should also be possible to apply these profiles to track registry. Although there is thus stated a presumed offender, it can still achieve results with previously recorded tracks. When these are connected, the number of cases seen in context and thus provide a basis for criminal tactical considerations that may contribute to the solution of the case.

Finally, should profiles from unidentified same could be applied to identity and track registry. If you get hits from Identity Register, will the body be identified. Both the community as the families will be served by the identity ascertained. The profile applied to track the registry, however, will not involve any identification. When a person has died, it may not be applicable any criminal liability. Considerations that you should be able to get closed criminal cases, speeches, however, that one should be able to conduct such a search.

Beyond the search of DNA profiles from unidentified corpses, can not register used to conduct searches to locate missing persons. This could be relevant where a person has disappeared, and we obtained the DNA profile of close relatives and conducted searches against DNA register. If the missing is detected, the family may find the missing persons through police records. It is also possible that you get similar requests from foreign governments, such as where a person knowingly has disappeared from his family and taken residence in Norway. The Committee believes that the relatives cannot be entitled to receive assistance through the use of DNA registry to track down a person who might deliberately evade contact from family and relatives. In the same way as the sample from 1992, according to this committee that it is therefore unacceptable to let relatives be allowed to register their own DNA profile in the slot register. 30

The committee sees that the DNA register could be used in connection with the determination of identity in immigration cases. As long as identity is not relevant in a criminal case, however, can not register is used to determine the identity of an administrative case. If it is opened for such use of the registry, this must be done through legislative changes in immigration law.

6.7 Disclosure of information to foreign governments?

In order to solve the crime, DNA analysis is an important tool. If each country retains the analytical results for themselves, the international police cooperation will be harmed. The murder of a young woman at Carlow in 2001, would hardly have been solved if not offender DNA profile had been made available abroad. Interpol has also established a database in which each member country can be registered track profiles. The Committee believes that the same considerations that justify the use of DNA analysis in the fight against crime nationally, makes the corresponding current in relation to transnational crime. That it should take place on an exchange of DNA analysis across national borders is also provided in Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992 paragraph 12 and of the Council of the European Union, see Council resolution of 25 June 2001 on the exchange of DNA analysis (2001 / C 187/01). It is therefore natural that in Norway gives clear legal authority for such information. DNA profiles belonging to people with known identity should be disclosed both for search in a specific case, search for other countries 'DNA registers and registration in other countries' identity records. It should not be permitted to disclose profiles corresponding suspects, without having stated that the use shall be limited to search. The committee requires that information of DNA analysis can only be made in accordance with the Act's purpose, namely to facilitate an effective investigation based on certain established identity. Also stipulated that only foreign law enforcement authority may be given such information. However, there is nothing to prevent foreign law enforcement authority of experts access to the analysis of surveys in accordance with the Act's purposes. In all cases, the requirements of Section 12 of Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992, attended. The King should be allowed to develop further rules on the requirements you should ask to disclose information to foreign governments, for example, so you will not disclose information to countries which do not accommodate the basic requirements of due process of investigation of criminal cases.

6.8 Storage of analytical and track material

The committee is asked to consider the issue of storage of analytical and biological materials. It is natural to consider the question separately for analytical results and biological materials.

The analytical result obtained in the form of a series of numbers. It can be stored electronically, but in addition it can be printed sequence. The committee is aware that at some police kept transcripts of the DNA profile of famous people. The Committee believes that the establishment of such "records" may lead to a circumvention of the rules of search in DNA Registry, and therefore should not be allowed to keep the printing of other than the Registrar and the experts who make the analysis work. Printing number code shall not be attached the documents, but so that only the expert assessment of the analysis to be made available to the parties. In practice, the parties will be difficult to make use of the analysis. The required expertise to conduct an independent assessment of the analysis, and this expertise is not in the prosecution or defense.

The committee sees a need for it should be possible for the defendant may obtain a transcript of the analytical results for the purpose of submitting it to another expert. The law should provide the opening for this.

The committee is divided on whether the biological material can be kept after the analysis is completed. In this context, understand the biological sample material so that it is a question of what is collected to determine the identity of the person who is registered. Track Material that is found and secured the crime scene or victim, falling outside. Such material must be kept safe by the police. As long as the matter is not finally decided the material can be key evidence, and when the case is legally settled material can have an impact on any claim for revision. The Committee believes that it is outside the mandate to go into further detail on the retention of such evidence.

The majority, Beach Hill, Antun and Fossgard, believes that the material collected to determine the identity should be retained after the analysis is completed. It must be expressly stated in the law that the material can only be kept in accordance with the Act's purpose - ie to determine identity. Today's DNA registry consists of 11 markers that establishes identity. In Germany 12, while in the U.S. working to develop 16 markers of identity registry purposes. The 11 used in Norway, it is sufficient that one of the security requirements imposed by the criminal standard of proof, can determine the identity. But since other countries seem to develop the registry with additional markers may be more difficult to exploit registers sufficiently effective if each country has different number of markers. In Bryne case was DNA profiles from crime scene sent to Germany to search against the German DNA register. Based on the profiles used in Norway, came up approx. 80 candidates that it had made further investigations. But after that in Norway conducted a new analysis of material from the scene and got out one of the markers used in Germany, there was not some candidates from the register in Germany.

To the majority sees it, the technological advances so fast that it is conceivable that a few years has added up to 12, 16 or 18 markers. The value of an index based on 11 markers can then be significantly reduced. There is reason to believe that in Norway will follow the international trend so that at a given time will make use of additional markers. But those who have already registered, will be based on 11 If the profiles that are registered before any upgrade to meet the new standard, it must obtain new samples of the defendants. Both practical and economical, this will be very appropriate. If the trace material retained on the other hand, the profiles can be upgraded without the need for a new trial. The majority believes that this should weigh heavily in the assessment of this question and can not see that such a solution raises problems in relation to Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992 Item 8, which it certainly is recommended that the material should not be kept after the case is finally decided. Denmark took the subject to the recommendation in its entirety, while Germany, the Netherlands and Norway have made a reservation to meet or not meet the requirements of section 8 If the material is stored, it may be a risk that this be used for any purpose other than that was the reason for that in his time were obtained. If it happens without the necessary permits have been obtained under the legislation, there will be no question of an abuse of the material, for example in relation to genetic research, etc.. The majority believes that any abuse should be met with sanctions against those responsible, and not by that adopts a mechanism that prevents the development of the register. The legislature can later change the law so that the DNA material collected for one purpose can be used for another, should not prevent that today pass a law that paves the

way to meet the technological development in the area. The debate about the extended use including research on the collected material must be taken when the case is appropriate. As already mentioned, Recommendation No. R (92) 1 from the Committee of Ministers of 10 February 1992 Section 3, first paragraph restrict the right to use material for purposes other than identification in criminal justice.

Storage of biological materials with a view to developing DNA register will initially be subject to the Act on biobanks of 21 February 2003 No. 12 This law contains provisions on the establishment and organization of biobanks. The modalities of the establishment specified in the Act § 4 The majority can not see that the storage of biological materials that are regulated in a law, will be problematic in relation to biobank legislation. The purpose of preservation is clearly defined and limited to use for identification purposes. Furthermore, there will be special requirements for the storing material, so that the considerations which justified biobank legislation are fully met.

The majority believes that the person who made the analysis should also store the material.

The minority, Apenes and Larsen, believes that the biological material DNA analysis derived from, must be destroyed when the final, damning verdict exists. Storage will alter the traditional and the general notion that the verdict and the ultimate penalty ends offender balances with society.

Storage will also break dramatically with the main principle in the current national and international privacy laws, cf. EU Directive 95/46, namely the so-called "finality principle" which requires that information collected is to be any purpose. The purpose should be expressly stated, fact-based.

The minority believes that the storage of biological material in emergencies with the situation in view that scientific progress in the future will put forensic experts are able to extract new information of the material comes into conflict with finality principle. These members remind also that the storage will involve the creation of a biobank, which in itself makes special legal and practical requirements to own and use.

Although registration technically should not be regarded or treated as criminal, it represents an uncertainty with respect to future abuse / additional use, and may therefore be an unreasonable additional burden that more than offsets the inconvenient of having to obtain new biological sample.

A total sample believe that the provision at present has strpl. § 160A subsection gives the king the right to allow research on the register should be deleted. Research on material with a view to identifying personal characteristics that are important for identity purposes cannot be permitted. However, it must be possible to conduct research that is within the Act's purposes, for example in relation to the frequency of occurrence of elements of a DNA profile in the population of de-identified form. Such research is necessary to calculate the probability that a DNA traces originating from the suspect. 31 Furthermore, the Commission believes that it should also be able to research the register's importance to solving criminal cases. Such research will only include the statistical element.

If we were to allow research on the register beyond that mentioned above, should permit in any event not be given through a decision by the Crown pursuant to strpl. § 160A subsection. As of today we have mentioned do not know how many of a person's characteristics that can be mapped through research on DNA. Such research can raise difficult ethical questions. To what extent such research is permitted, should be subject to a thorough debate. It is natural that the debate be continued in relation to a legislative

process. As mentioned above, will also Recommendation No. R (92) 1 from the Committee of Ministers of 10 February 1992 Section 3, third paragraph put restrictions on the freedom to allow research on material obtained in connection with the investigation of criminal acts.

6.9 Some management issues

6.9.1 Paying Agent, disclosure, deletion, etc.

Today, the New NCIS who is the registrar. The committee sees no reason to make any change at this point. It cannot be excluded that in the future choose to add this task to another part of the police. New NCIS should not be given a special position in law, but so that there is a general rule that it is the King who decides who is responsible registrar under the Act.

It's basically just the registrar who shall have access to the register. The various police should have no direct access, but must comply with their requests to the Registrar who then perform the investigations that the petition gives occasion. If it's practical, it should however be allowed to decide that the analyst has access to the Registry. The Committee believes that this can simplify the search in the register and thus be resource efficient. After you have obtained DNA profile, could the experts carried out a search against the identity register and then make a further assessment of whether the profile matches with a person who is already registered. With the demands placed on them to perform the analysis, it is hardly a danger that there will be no abuse of those given such access. Whether it be given such access should be determined by the King in Council. The Committee has therefore confined itself to propose an authorization decision on this point.

When it comes to exchange of information between the analysts and forensic DNA database, this should also be regulated in an appropriate manner by the King in Council.

It is natural that the person being recorded is given notice of this. Out of such a message should not be given out information about the contents of the register. The Committee refers to the Danish regulation, which here seems appropriate. 32 In order to prevent employers, foreign governments, etc., Access to information that a person is registered in the DNA register, it should not be allowed to require informed if a person is registered or not. Without such a rule, the data being pressured by such employer to submit a transcript from the register. It is therefore necessary to have an absolute ban.

The decisions about registration will generally be routine. Anyone who believes that there is no basis for registration, should be able to appeal the decision to the immediately superior prosecutors. Neither the decision or an appeal is likely to be particularly resource intensive. There will also be an opportunity to sample the decision of a court following the Civil Procedure Act. Such tests will be limited to legal control, and is therefore unlikely to be particularly practical. The court can only decide whether the statutory requirements for registration are met.

When the data is dead, it must be possible to delete the DNA profile. The Committee believes, however, that this right should be formulated as a "can do" rule. It cannot be ruled out that the profile may be of interest for that person's death, cf. considerations on this issue in German law. 33 But when the person who is registered will be acquitted after the resumption, it is no longer a basis for registration. In such cases, the Commission believes that the profile should be deleted.

6.9.2 Who decides registration

As mentioned, normally the decision on registration of persons in the DNA record should be routine. Following the majority's suggestion to anyone who imposed a sentence for an act that can lead to imprisonment, to be identified. Whoever makes the decision must therefore only check whether the act that the accused is convicted, may provide grounds for imprisonment under the general penalty. Which reaction is applied in the specific case of no significance.

One could imagine that within the prosecution had made a decision to prosecute also adopted resolutions on registration. The committee has concluded that this expertise can be added to the prosecution of the police. After a case is closed, the documents filed in the police action is committed, cf. PTI. § 2-2. The decision about registration should be entered as part of the procedures for filing of the case. Any appeal against the registration will be decided by the public prosecutor.

However, there may be cases where the decision may not be current. The committee refers to cases where the accused can not be sentenced to punishment because of the provisions of the criminal code. § § 44 and 46/strl. 2005 § 20 In relation to persons under the minimum age of criminal law, it will not be any conviction that the assessment can build on. Whoever makes the decision must therefore make an independent assessment of the evidence, and registration can take place only when the criminal standard of proof is considered satisfied for all other terms than the perpetrator of age. After the committee's consideration should this type of decision taken by the public prosecutor. The cases where there are criminal code. § 44/strl. 2005 § 20 first paragraph b)-d), which means that there is no conviction, may raise difficult questions. Is the given sentence for special sanction, cf. criminal code. § § 39 ff / criminal code. 2005 § § 40 et seq and the criminal code. 2005 § § 62 et seq, however, the decision could be based on the verdict. But if the prosecution has considered the matter to be serious enough that it should be imposed on any reaction, the same considerations as in relation to offenders under the criminal legal age of consent to do the same current. Also, these decisions should therefore be added to the public prosecutor.

After PTI. § 11a-6, first paragraph, the registrar information for using the methods approved by the Ministry of Justice. After the committee's opinion, it is natural for the privacy authority has the responsibility to approve the way information is recorded and stored. In addition, the Committee noted that in England has established a regulatory body for DNA register. With the extent that the use of DNA will get the majority's suggestion, there may be reason to consider introducing a similar body in Norway.

6.9.3 Who makes the analysis

DNA analysis can be a crucial evidence in criminal cases. It is therefore important that the analysis is carried out by a body with high professional integrity. As with the other expert tasks in the criminal justice process, it is important that the body that carries out the analysis is independent. On this basis, the Commission believes that DNA analysis should be undertaken by an independent research institute. The choice of who should perform the analysis, will also Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992 Section 6 require that the body gets the task to have a high degree of professional knowledge, scientific integrity, etc.. Moreover, it is provided that Member States should make an authorization of the laboratories and institutions to perform the analysis. The committee considers it impractical, for example, New NCIS to conduct the analysis. First, not New NCIS currently meet the requirements of the Recommendation of 1992 with respect. to perform DNA analysis, and second, this will

create problems in relation to item 9 on the parties' equality. The use of independent experts is highlighted as one of the means to ensure the parties' equality. In comments to recommendation section 6, it is emphasized that in countries where the analysis will be conducted by police laboratories as Bundeskriminalamt in Germany, questions may arise about the question of an independent body. 34Dersom task placed outside the police avoids this discussion.

Today, it appears from PTI. § 11a-6 fourth paragraph that the Institute of Forensic Medicine at the University of Oslo who will conduct the analysis. At present it is only this institute which has the necessary expertise in Norway. In the future it may be more research that can perform DNA analysis. It may also be necessary to use foreign research institute. Who will perform the analysis should not be enshrined in law but that it is the King who decides who is to conduct DNA analysis. The choice of institution, the requirements in Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992 Section 6 are met.

Committee members, Beach Hill, Fossgard and Larsen, would emphasize that if it is determined that the analysis in the future will be made abroad, it may also be necessary to convene international experts to explain the analysis at trial. Legal language in Norway is Norwegian, cf. dmstl. § § 135 and 136, 35 and it can therefore be raised whether it is appropriate to a large extent, to become dependent on foreign experts. DNA in criminal cases differ thus from the DNA analysis conducted for administrative purposes, such as the determination of identity in immigration cases. After these members' opinion, it is important that the national has the necessary research expertise on the use of DNA in criminal cases. With the increased use of DNA analysis proposed in this paper, it will be necessary to strengthen the existing academic community, and it may also be necessary to establish new research. In all these members warn that forensic services commercialized. This may create a need for extensive use of private dedicated experts on DNA, cf. the practice is found on the use of private experts in the U.S. for example. Extensive use of private experts will lead to increased costs in both time and money. The Norwegian criminal justice will be better served if they have independent experts. Such independence is as stated provided in Recommendation No.. R (92) 1 from the Committee of Ministers of 10 February 1992 Section 6, and these members think that this is best assured by the experts has its roots in research at universities.

6.10 The design of the provisions on remedies

As stated in Section 4.2.2. above, it strpl. § 157 which provides the legal basis for collecting biological samples in order to produce a DNA profile. The right to collect fingerprints are regulated in a separate provision, see strpl. § 160 Today, the biological material to be obtained through a swab that stripped the accused's mouth. There is talk of a modest intervention, and has not so much in common with the more far-reaching investigations that may occur pursuant to strpl. § 157 The current method can hardly be expected to lead to a disproportionate interference, or cause danger or substantial pain. On this basis, the Commission believes that it should be designed in a separate provision on the collection of biological material in order to conduct a DNA analysis. **36**

Since the Committee proposes that the DNA registry is governed by special statute, the most of the contents of strpl. § 160A repealed and / or transmitted to this Act. It is therefore natural that strpl. § 160A instead provides statutory authority for collecting biological samples for DNA analysis. The provision of strpl. § 157 is not redundant, but other joints can be removed and incorporated into the "new" § 160A. The relationship

between § 157 and § 160A is regulated by the draft of the new § 160A final paragraph. It's just the "typical" sampling with sampling in the form of a swab in the mouth, which is governed by § 160A. To ensure secure identity and prevent increased risk, it is important that police fill out the form completely so that it is also stated in the prosecution of the sample is collected in. The procedures relating to the collection of blood samples may here be normative.

If there is a need to collect the biological material in any way, it would be legal for under § 157. Since then can be thought of more invasive investigations, it is natural that the legal safeguards enshrined in § 157 applies. If new technology makes it appropriate, it should be right for the King to decide that the biological material obtained by other little intrusive way to be covered by § 160A rather than § 157. In order to obtain biological material under § 160A is sufficient cause to suspect a criminal act that can lead to imprisonment. This is the same conditions as under the current § 157, first paragraph. The committee has gutted the requirement that it must be assumed that the survey may be relevant to the case. For the type of studies that § 157 was originally designed with a view, this was a natural requirement. Today the collection of biological material as little intrusive and should be considered in line with the collection of fingerprints. Collection of biological material from the oral cavity should be done routinely in connection with his arrest. **37**

It is not, however, given that the material is subjected to DNA analysis already under investigation. In some cases there may be as far as a lot of other evidence that it is unnecessary to conduct a DNA analysis of material from the defendant. This must be considered by the police conducting the investigation. But when the material is obtained already at the arrest, avoids the practical problems that today face when DNA material to be obtained for the existence of a conviction as a basis for registration. Under current rules, an accused refuse to submit to try and appeal the decision that it would undertake registration. When the appeal lodged in connection with the police seek out the person charged for the collection of the sample, this would mean that he must be sought after the appeal is decided. The majority's draft, avoids this kind of problems.

The Committee believes that the DNA in the greater should be used in the investigation, and cannot see the considerations that indicate that the person with reasonable grounds is suspected of having committed an act that can lead to imprisonment shall be protected against that his DNA profile is used to examine whether he has made other criminal acts which are deposited biological traces that are added in trace register. It should be the same as today is the possibility that the DNA profiles obtained on the basis of biological material obtained at the investigation under § 160A may apply to the track register.

Otherwise, contains the draft § 160A the necessary authorizations for the use of force, both during the investigation and in the event that the biological material first obtained after the case is legally settled.

After strpl. § 157, second paragraph, it may by consent be obtained biological material without regard to whether there are reasonable grounds for suspicion. This can be handy in so-called "screening", where you collect biological samples from all who live within a specific area or who have resided in a particular area where there is committed a serious crime. This was such implemented in the so-called Forde case, where it managed to tie the perpetrator to action after a large number of samples were analyzed. **38** The Commission believes that such access must be maintained. DNA analysis was obtained by consent without

the existence of reasonable grounds for suspicion against the person who submits the sample can be used only in the specific case as it is collected in. For example, conceivable that a large part of the inhabitants of the village A has made DNA sample in connection with a serious criminal case. Later, it committed a serious criminal case in the neighboring village B. In this case it will not be able to conduct searches on samples obtained in the case of A-in the slot in the case of built B. Material collected by the "screening" and DNA profiles obtained on the basis of such material shall be destroyed when the purpose of this study is achieved. In practice, this means as soon as they are checked against the traces at the scene, and it is impossible that the track originated from that person. These profiles are not in the identity register or track the register, and they should not be kept in a police "for safety's sake." This regulation is consistent with the Swedish law, and it is not proposed any change at this point in the study from 2004. 39The other changes in strpl. § 157 and § 160, only the character of fit when the rules on the collection of biological material is collected in § 160A.In addition, the Committee emphasize that strpl. § 160A is not exhaustive as regards the collection of the DNA profile of suspects and defendants. If the conditions for the seizures are met, can be performed DNA analysis of clothing and other articles belonging to the accused.

6.11 The need for further research work

Members Apenes and Larsen believes that the use of DNA technology in criminal justice raises several issues that the Commission has not investigated further. One such problem is the current vague guidelines for the collection of biological samples such as provocation, searches, analysis of waste, etc.. Furthermore, treatment of Politimetode Commission's report should, for these members opinion, also address such issues.

7 Economic and administrative consequences

7.1 Some points of departure

Any extension of the current registration access will result in increased costs. When the sample is also required to submit a proposal will not result in increased costs, this must mean that the current registration access will remain unchanged.

Under current legislation meets approx. 500 people a year registration requirements for PTI. § 11a-2, first paragraph. In addition, meet some. 500 people, the terms of the PTI. § 11a-2, second paragraph where the Attorney General has stated that the registration should normally be carried out, cf. PTI. § 11a-2, fifth paragraph, cf. attorney general circulars Part II no. 2 / 1998 s. 2 Based on these figures, almost 10,000 people to be registered in the DNA register by the end of 2005. Individuals who otherwise meet the conditions of PTI. § 11a-2, second paragraph, but that falls outside the guidelines the Attorney General has provided, is ca. 5,000 cases per year.

Pursuant to strpl. § 157, in 2004 analyzed the biological material from ca. 1,000 suspects / defendants. These profiles are used to make queries against the trace register. It appears that at the investigation into several samples of the same person because he / she is suspected in cases investigated by various police. The biological material from the same person assured several times is not unusual within the police, as it is not allowed to bring any record of who has given samples. This means that a portion of the

increased cost of the extended registration access as the majority suggests, could be saved by the need for tests under § 157 void because the DNA profile is already registered in the central DNA register.

7.2 Number Material

Both the majority and the minority's proposal will result in a significant increase in the number of persons who meet the conditions for DNA detection. Based on figures from the Central Criminal Police and Data register (SSP) may be imposed following chart:

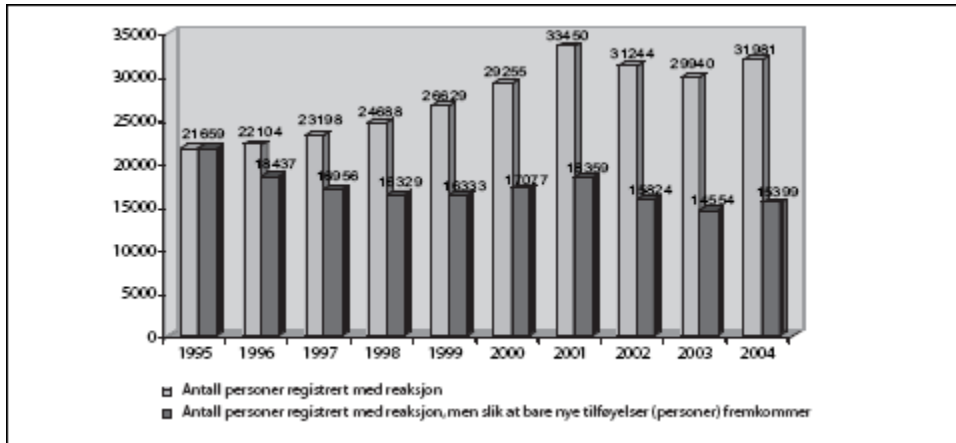


Figure 7.1 The graph shows the number of persons registered with the reaction of the SSP and on this basis, the number of persons acc. majority setting will qualify for DNA detection. In the SSP recorded judgments, fines in felony cases, conditional waivers of prosecution, community penalties, sanctions (hedge / custody), etc., Cf. Act convictions, § 1, cf. convictions Regulations § 2

Although the number of people registered in the SSP with the reaction has increased from 21,659 in 1995 to 31,981 in 2004, the number of *new* registrations in the DNA register for the same period be reduced from 21,659 to 15,399. Persons who meet the conditions for DNA detection, based on these figures, believed to be about. 32,000 in 2006. After this time there will be a gradual reduction in the number of new registrations.

This figure, however, contains no fines in misdemeanor cases or unconditional waivers of prosecution, since such reactions do not authorize registration in the SSP. It is therefore out of STRASAK made an estimate of how many people here are talking about. This shows a further increase in the number of persons who meet the conditions for DNA detection.

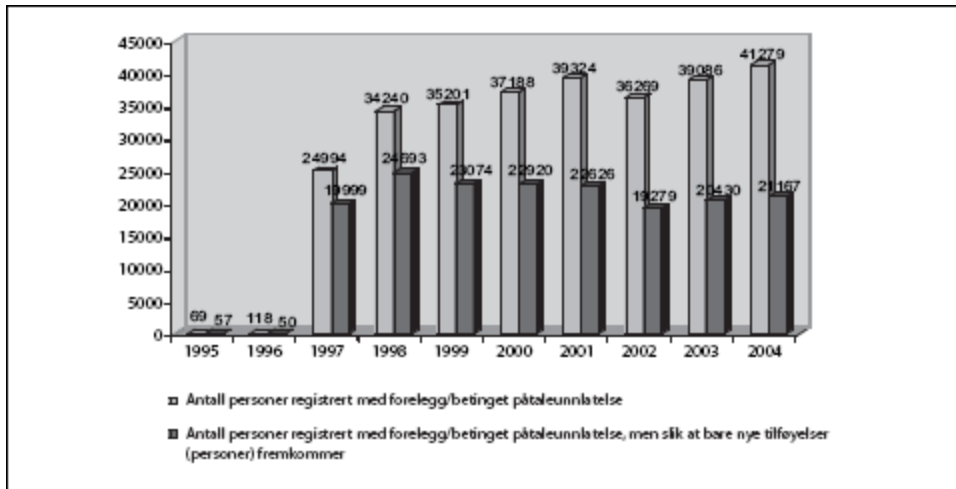


Figure 7.2 The graph shows the number of persons registered in STRASAK with cases that are either settled with fines or conditional waiver, and on this basis, the number of persons acc. majority setting will qualify for registration in the DNA register. Person referred to in SSP - see Fig. 7.1 - is not included in the figures in Fig.7.2. It should be noted that the figures from 1995 and 1996 differs greatly from the real numbers due to redevelopment in STRASAK.

Although the number of persons registered in STRASAK with either fines or conditional waiver has increased from 24,994 in 1997 to 41,279 in 2004, the number of *new* registrations in the DNA record should be relatively stable over the same period.

These figures must be viewed in conjunction with the figures obtained from the SSP, as the persons referred to in the figures in Figure 7.1 is referred to in the figures in Figure 7.2. Persons who meet the conditions for DNA detection, based on figures from STRASAK, believed to be about 41,000 in 2006. After this time must be expected a gradual reduction in the number of new registrations.

Based on figures from both the SSP and figures STRASAK, there is reason to believe that the majority's proposal would mean that approx. 73,000 people will qualify for DNA detection in 2006. After 2006 there will be a gradual reduction in the number of new registrations, but that this reduction will not be significantly noticeable in the early years. If one assumes the figures from 2004, it will in time be approx. 40,000 new registrations per year.

What applies to tracks the register, the forecasts are more uncertain. A comprehensive identity register will be without value if the number of slots secured at crime scenes is not increased. However, it will be a close relationship between the likelihood of identification and police's priorities with respect. to set aside funds for crime scene work. The probability of identification will also affect the individual police officer / woman's motivation with respect. To ensure biological material at a crime scene. An extension of the current registration access to the majority has proposed, to some extent ensure this. A central funding of the analytical work - even when it comes to track sections so that the police districts only have to carry a small proportion of these costs - both could have a positive effect with respect. clarification, but also ensure that such a crime scene work is given a similar priority for all police.

Based on these figures, the Committee will look at the administrative and economic consequences of the majority proposal.

7.3 Consequences for the Registrar - New NCIS

Today there are two full-time positions related to the management of DNA registry at New NCIS. A record entry in accordance with the majority's suggestion, will mean that it must be given an additional 10 FTEs. The first year will FTEs almost entirely be related to registrations. As the number of new registrations is reduced, the Registry will have such a volume that the executive management will still require that staffing is maintained.

This increase will mean £. 500.000, - in time investments related to the creation of new employment. Furthermore, it will incur £.5,000,000, - in annual salaries. Moreover, it must develop a new caseworker solution to replace the current solution is developed in Lotus Notes. This is calculated to be NOK. 1500000, -.

Overall, this means that the first year is needed to inject new NCIS 7 million. After this, the annual cost of 5 million.

7.4 Implications for laboratory services - Institute of Forensic Medicine

The Committee has submitted the majority's proposal for Forensic Medicine Institute, which has been asked to estimate the costs associated with the production of DNA profiles. The Department has made such a statement:

"The analysis of samples for DNA register is integrated into the daily routine work. There is no provision for separate analysis machines for this. With the current staffing (11 FTEs) and the equipment performed a total of approx. 20 000 DNA analysis per year and there is no spare capacity.

A significant increase in the number of personal samples for analysis will require increases in capacity terms. analytical equipment and conversion to more automated processes / robotics. An increase in the analyzed individual samples will probably also lead to increased use of DNA analysis in the following research purposes (number of cases / number of tracks samples). This will also give rise to several hits in the DNA registry and the need for resources to address them.

Purchase of the robot, a new analysis engine and the appointment of five persons will increase capacity by twice, maybe more. To increase the capacity further, it must hire more people. New staff and new equipment requires a certain training / introductory period, and it is therefore recommended to create a plan for the phased expansion of laboratory capacity and structure of the DNA registry.

Estimates are based on typing of 20 000 new passenger tests per year:

The annual cost			
	number of	about. cost pr.stk	sum
Employees	5	500000	2500000
Cost per. test	20000	800	16000000
Total			18500000
Start Investing			
Pipetting robot	1	2000000	2000000
Capillary Electrophoreses	1	2000000	2000000

div. minor equipment / PC etc		500000
Total		4500000

A larger increase in the number of tracks cases for analysis will also require increased staff - the number is difficult to estimate, and a major expansion of activity, relatively rapid demand greater area than that allocated in the day. "

As stated in the majority's proposals require time investment of 4.5 million, while the analysis of 20,000 samples per year will amount to 18.5 million. It can not be excluded that it may be necessary to increase staffing further, including that there may be a need for larger premises. In addition, there will be variable costs associated with the analysis of trace samples.

7.5 Consequences for police districts

Sampling kit prepared for use by the recording of the reference samples of people costs £. 150, -. With approx. 70,000 that qualify for registration the first year, this means approx. £. 10,000,000, - the expenses associated with the sampling kits. As the number of people falling, so that spending on the sampling set is smaller. Police Districts must also expect some additional work related to administration and sampling when the number of persons to be DNA registered increases in accordance with the majority has proposed.

7.6 Other consequences and costs - potential savings

Increased use of DNA analysis in criminal cases will lead to clarification of several criminal cases. This in turn will lead to more cases iretteføres. It will therefore incur increased costs of court proceedings. With several explanations may also incur increased costs related to the prison grounds. These costs are difficult to calculate.

But the proposal could also have savings opportunities. Using DNA analysis may be excluded from a suspected case, while it can happen faster clarifications. Savings related to the investigation is also difficult to estimate. With DNA evidence, it is also reason to expect that the scope of the presentation of evidence at trial can be reduced, while the suspects are confronted with DNA evidence, choose to comply and thus agree to adjudication as a plea for strpl. § 248 Also, these savings are difficult to calculate the effect of.

The fact that several criminal offenses cleared up may also have other consequences which are not easily measurable. First, the increased detection rate in itself have a general deterrent effect. The individual citizen may feel an increased sense of security if a larger proportion of offenses cleared. Furthermore, a higher detection rate increase confidence in the criminal justice process, including the law enforcement authorities have increased reputation with the public.

7.7 Summary

The costs of expansion of forensic DNA database can be divided into two: Start-up costs and ongoing costs of operating the registry, including the analysis costs. The New NCIS is the talk of at least 2 million in one-time investment, while the Forensic Medicine Institute has estimated such costs to 4.5 million. Based on the number who qualify for registration the first year, it will accrue 10 million in the sampling kit. As the number of people who qualify for registration will be particularly high in the first year, the cost of analysis of individual samples could approach 80 million in the first year (18.5 million per 20,000 samples cf.

Information from RMI). It must therefore be assumed that the costs of the implementation phase reaches approx. 96.5 million respectively.

The ongoing costs will then be reduced. Based on figures from 2004, after some years be less than 40,000 newly registered people per year. The cost of the analysis of individual samples will be after a few years at around 37 million (18.5 million per 20,000 samples cf. Information from RMI). In addition we need an increase manpower in New NCIS intended to 5 million per year. With approx. 40,000 new registrations will cost the sampling set amount to 6 million. Overall, the operation of the registry appear in 47 million per year.

8 Comments on individual paragraphs of the draft Bill

Law on legal procedure in criminal cases (Criminal Law) of 22 May 1981 No. 25

To § 157:

The committee proposes that the rules on the collection of biological material for the purpose of DNA analysis, are included in § 160A, see chapter 6.10. above. The second paragraph in the current § 157 should be moved to § 160A. Current third, fourth and fifth paragraph of § 157, is no change new second, third and fourth paragraph.

To § 160:

As noted in the comments to § 157, the committee proposes that the rules on the collection of biological material collected in § 160A. The reference in current § 160 to § 157, third paragraph, must be amended so that it appears to § 157, second paragraph.

To § 160A:

The provision gives authority to collect biological material for the purpose of DNA analysis. Under current law, the § 157 which provides the legal basis for obtaining such material, but the committee has found that this right should be regulated in a separate provision, see Section 6.10. above.

Conditions for obtaining biological material after *the first paragraph* is the same as in the days after the § 157 first paragraph.

There must be reasonable grounds to suspect a criminal act that can lead to imprisonment. In light of that technological development has resulted in the collection of biological material can be done using a cotton swab in the mouth, cannot find the sample needs to include the condition that there shall not appear as a disproportionate infringement, see § 157, first paragraph the first sentence if. Collection of biological material from the oral cavity can now be thought difficult to be a disproportionate interference. In all cases, the general principle of proportionality in the use of coercive measures are set out in § 170a, apply in relation to the collection of samples under § 160A, cf. Rt. 2003 p. 163 (p. 165).

After strpl. § 157, second paragraph, it may by consent be obtained biological material without regard to whether there are reasonable grounds for suspicion. This can be handy in so-called "screening", where you collect biological samples from all who live within a particular place or who have resided in the particular

area where there is committed a serious crime, see further section 6.10. above. The Committee believes that such access must be maintained, and the provision on this is contained in the draft of *the second paragraph*.

In the *second paragraph, second sentence*, the committee proposes that it is determined that both the analytical result and the biological material obtained by "screening" shall be destroyed when the purpose of this study are achieved, including that the results are reviewed and quality assured, see further section 6.10. above.

Police can obtain the biological material, cf. draft of the *third paragraph, first sentence*. As mentioned, the question of a small procedure compared with what otherwise may be made under § 157 It should therefore not required that the material collected by health care, cf. vtrl. § 22a subsection regards blood test on suspicion of drunken driving.

If the suspect or convicted person refuses to participate in the necessary investigation, the Commission believes that the sample can only be obtained when the court has determined that the conditions for this are present, see the draft of the *third paragraph, second sentence*. The committee has not found reason to take an urgent decision that the § 157 fifth paragraph which by order of the prosecuting authority can take the place of the court's decision. In contrast to the investigation under § 157 where it may be necessary to search for biological material on the suspect, such as under nails, etc.. Will not biological material under § 160A may disappear or be lost. The Committee believes also that it is sufficient that the court has the form of a decision.

The Commission also finds that § 160A should include the authority to collect biological material to persons who are convicted of an offense that can result in imprisonment, see the draft of the *fourth paragraph, first sentence*. If biological material is obtained during the investigation, but the case ends with a conviction that qualifies for registration in the DNA register, it must be authorized to collect the material later. Such authority can be found today in § 160A, second paragraph. The draft is also in line with the provisions of § 160 that allows it to obtain fingerprints of persons convicted of an offense that can result in imprisonment.

Fourth paragraph, second sentence provides the legal basis for obtaining biological material of which abroad is convicted of an act that qualifies for registration for the draft DNA Registry Act, § 3, third paragraph, see further section 6.4. above.

Fourth paragraph, third sentence gives the provision to obtain biological material by force. Such coercion can be exercised by the police when this can be done without danger or significant pain. Since there is a final decision in the case, there is no basis to require the court's decision to use restraint.

It is conceivable that the police need to make a more invasive physical examination of suspects. In this case, the provisions of § 157 as applicable. In such a study can also be obtained biological material for DNA analysis. In order to clarify the scope of § 160A with respect to § 157, it is in draft § 160A *subsection* provides that this provision only applies to the saliva, and cell samples from suspects or convicted person's mouth, but that the King in Council is authorized to decide that § 160A also may include other biological materials, see further section 6.10. above.

The draft law on DNA database for use in criminal justice

In § 1 Purpose:

The provision concerning the purpose.

DNA registry is created solely for the purpose of investigation of criminal cases. Register may *not* be used for other purposes, such as identification in immigration cases, genetic research, etc.. Moreover, the register shall only be used to determine identity. This means that only information which can determine the identity of a person to be included in the register. See also chapter 6.3.2. above.

The purpose of the register is to facilitate a more effective investigation of criminal cases. Criminal Procedure Act, Chapter 18 has the heading "Investigation". As shown in the various provisions of this chapter may also initiate an investigation even if there is suspicion of criminal offenses. After strpl. § 224, fourth paragraph, it may initiate an investigation by fire and other accidents, and after strpl. § 228 second sentence may be an expert similar check of contents even if there is suspicion of a criminal offense. If it detects an unknown like how there is no reason to believe that death is caused by a criminal act, should also register could be used to reveal the identity. The Commission finds that using the term "investigation" in § 1, it will be clear that the register can also be used in this context.

In § 2 Definitions:

The provision deals with definitions.

After *no 1* is a DNA profile in the legal sense, limited to being an analysis of biological samples to determine the identity of a person. This means that a DNA profile should not contain any other information about their personal characteristics than gender.

No. 2 defines identity register to hold the DNA profile of individuals with known identity. Such profiles should be referred to as "identity profile". Just as today, it will be necessary to continue the link between the profile and the person's personal, etc..

Track Register is defined in *paragraph 3* and shall contain the DNA profile of unidentified persons, and the closer connection to an unsolved criminal cases. Such profiles should be referred to as "track profiles."

In § 3 Identity Register:

The provision deals with identity register.

As stated in Section 6.3.3. above, the committee majority believes that any criminal sanction for an act that can lead to imprisonment, should qualify for registration in the identity register, see the draft of the *first paragraph, first sentence*. The minority believes that the limit should be set at six months.

The criminal sanction committee understands the general penalties in the criminal code. § 15 first paragraph: imprisonment, detention, booklet, society met and fines. Of rights for criminal code. § 29 should not provide a basis for registration. Additional penalties in the criminal code. § 16 do not travel any special questions in this context, since they can only be used in conjunction with major penalties in the criminal code. § 15 In addition, the waiver by strpl. § 69 expressly mentioned by the side of the criminal sanction. Transfer to mediation in conflict council, cf. strpl. § 71 a, is not a criminal sanction, and therefore provides no basis for registration. Neither confiscation, cf. criminal code. § § 34 et seq, compulsory mental

health care, cf. criminal code. § 39, forced care, cf. criminal code. § 39A is punishment. As stated in the *draft, second paragraph*, however, people that can not be sentenced to punishment due. provisions of the criminal code. § § 44 and 46 still be detected in the identity register.

The Penal Code of 20 May 2005 No. 28 has a different definition of what should be regarded as criminal sanctions. When the new penal code comes into force, the § 3 is limited to include the criminal code. 2005 § 29 a)-d) and the criminal code. § 30 f), but so that the reactions imposed as a result of the condition mentioned in the criminal code. § § 44-46/strl. 2005 § 20, provides access to registration.

Registration will only take place when the decision is final or the case is finally settled, cf. draft of the *first paragraph, second sentence*. This provision corresponds to the PTI. § 11a-2, third paragraph. It must be drawn up procedures to ensure that persons who meet the conditions for registration are registered. The identity of the person to be registered must be stated in an unambiguous manner, including the offense that provides a basis for registration. Proper use, including the complete filling of the form relating to the current sample set will ensure that these requirements are met.

Cases in which it is issued fixed penalty notices should not provide a basis for registration, see the draft of § 1 *first paragraph, third sentence*, and further chapter 6.3.4. above. If it is issued fixed penalty notices to be denied approved, will not be a subsequent trial in which it imposed an annual fine, mean that the act now provides a basis for registration.

The second paragraph is a continuation of current strpl. § 160A, first paragraph, third sentence. As stated in Section 6.3.4. above, the Committee finds it clear that the person the group referred to in the second paragraph and who has committed an otherwise criminal act that can lead to imprisonment, should be registered.

The draft of *the third paragraph* allows people who have a residence in Norway shall be registered in the identity register if they are serving a sentence abroad. The background to this provision, see section 6.4. above.

The fourth paragraph provides authority for the person who has reasonable grounds may be registered in the identity register. This provision corresponds to the PTI. § 11a-2, second paragraph, letter c). The rationale for this entry, see Chapter 6.3.4. above.

Subsection regulate who is responsible for the DNA profiles entered in the identity register. About the detailed rationale for this provision, refer to Chapter 6.9.2. above.

The sixth paragraph gives the King in Council authority to lay down detailed rules for registration of the identity register. As stated in Section 6.3.4. above, the majority of the committee advocated a broad access to undertake registration. If, for special types of cases are necessary to make registration, for example, the first time offenses, this should be defined in regulations.

Starting in the sixth paragraph, it also determined that employees in the police and prosecutors as well as persons who perform DNA analysis to be registered. This can be convenient for the people who work in connection with the crime scene and analysis of DNA traces.

In § 4 Track Registry:

The provision deals with trace register, and is based on strpl. § 160A, fourth paragraph, cf. PTI. § 11a-3.

The DNA profile from the unknown, suspected perpetrators to be recorded in the trace register, cf. draft § 2, paragraph 3, where such profiles are defined as "track profiles." Offenders with known identities - so-called "identity profile" cf. draft § 2, paragraph 2 - cannot be detected in trace register.

If it's committed a crime, such as a burglary, there may be multiple DNA traces at the scene. Some of these may originate from the victim or persons in the household. Such profiles shall not be registered, see further section 6.5. above. When *the first sentence* requires that the track is assumed to be related to an unsolved criminal case, it is in other words. offender DNA profile it refers.

It is the Registrar who decides whether a profile should be recorded in the trace register, cf. draft of the *second sentence*. This provision corresponds to the PTI. § 11a-3, third paragraph. The profile shall be recorded as soon as it is manufactured, quality controlled and approved, see the draft of the *third period* that corresponds to the PTI. § 11a-3, second paragraph.

The second paragraph gives the King in Council authority to lay down more detailed rules on slot register. The provision can be used to provide more detailed requirements for registration, for example, whether related to the site terms. time and place, and the use of reference samples.

In § 5 Search the identity and track registry:

The provision deals with search in identity and trace register.

The provision is based in part on PTI. § 11a-4. Out of consideration for listing in the regulations, the Committee decided to separate out the individual search situation in each paragraph.

Under current law, there is a relatively small group that can be registered in the identity register, see strpl. § 160A cf. PTI. § 11a-2. The provision of the PTI. § 11a-4, second paragraph opens, however, that an anonymous person with a known identity can be connected to track the register if there are reasonable grounds for suspecting that the person committed an offense or the prior written consent. After the draft of § 5, *first paragraph*, it is possible to search a DNA profile from any person with reasonable grounds is suspected of an offense that can lead to imprisonment, the trace register. All suspects mentioned in the draft § 160A subsection may in other words. sought to trace the register at the investigation. It is an opportunity to conduct more searches as long as they have status as a suspect. Terminate status as a suspect and the case is dropped, it is no longer possible to search the person to register. To prevent such searches are carried out, the profile of the suspect destroyed when they are checked out of the case. About the detailed rationale for the proposal refer to chapter 6.10. cf. Section 6.6. above.

The second paragraph makes it possible to conduct searches to track the register of DNA profiles of people who are registered with the identity register. Such access may seem redundant given that it already at the investigation can be carried out searches against the trace register. But it is not certain that it is obtained a DNA profile of the suspect in the investigation, for example, where there is sufficient evidence without needing a DNA analysis. It is therefore conceivable that such a profile is obtained for the existence of a legally binding verdict. In this case, it should be legal basis for applying the profile to track registry.

Furthermore, it is conceivable that a person already registered in the register, commit new crimes where it is deposited biological material is placed in slot register. For that you should have clear authority to periodically seek identity registry to track the registry, should such a provision is included in the Act.

The third paragraph provides authority to use DNA profiles from a crime scene to search against the identity register and track registry. The fact that such material can be searched against the identity register, can help to solve crimes where the perpetrator is initially unknown. The fact that you also can search these DNA profiles to trace the registry, allows you to connect multiple offenses with unknown perpetrator together, see further section 6.6. above.

The fourth paragraph provides authority to search DNA profiles from unidentified equal to both identity registry that tracks the registry, see further section 6.6. above

In § 6 Paying Agent:

The provision deals with who the registrar under the Act.

After PTI. § 11a-1 states that it is the head of the Central Criminal Police who is the registrar. As stated in Section 6.9.1. above, the Committee found no reason why it is determined in the law who will have this feature, see the draft of the *first sentence* which the King in Council authority to determine this.

Second sentence provides that only the registrar has access to the Registry. This provision corresponds to the PTI. § 11a-1, second paragraph, second sentence. By this provision it is stated that even though the Registrar authorizes access to the Registry. The Commission finds that such clarification is unnecessary. It lies within the authority of the *first sentence* to delineate individual circuit that has access to the Registry. Committee's proposal requires a development of the registry department, and it is natural that those who work at this department has access to it.

The third sentence gives the King in Council the authority to determine that the carrying out DNA analysis to have access to the Registry. The purpose of this provision is to open for such a scheme if it can be efficiently and conveniently, without the privacy interests will be harmed. When the King may issue such a determination, it is also possible to lay down further conditions for such access. Furthermore, the provision the power to establish rules for communication between the registrar and the person who performs DNA analysis, see further section 6.9.1. above.

In § 7 Transparency:

The provision governing access to the registry and is based partly on PTI. § 11a-5.

The first sentence corresponds to § 11a-5, first paragraph, first sentence. Anyone who is registered in the identity register shall immediately be notified of this. The message sent by letter to the data reported address. Beyond this is not the selection reason to grant the right to demand information from the registry, see the draft of the *second sentence*, cf. PTI. § 11a-5, first paragraph, second sentence, which allows it to require such information. The reason for the Committee's suggestions are as mentioned in Section 6.9.1. above, the risk that the information can be abused by outsiders, for example, that an employer requires the candidate to submit a print or confirmation that the person is not registered. Such abuse can also be thought in relation to an application for a visa to certain countries.

In § 8 Appeal:

The provision deals with appeals against decisions relating to registration of the identity register, and is based on PTI. § 11a-5, second paragraph.

First paragraph, first sentence deals with the right of appeal and the appeal authority. Everyone who is registered should have the right to appeal. The Board of Appeal should be immediately superior to the prosecuting authority, cf. strpl. § 59a subsection. The Committee believes that the Administration does not apply, cf. FVL. § 4, subparagraph b), but has nevertheless found that the complaint rules should be applied as appropriate, see *first paragraph, second sentence*.

If the decision is appealed as provided by the biological material obtained by force, the suspect or defendant require that the question whether the conditions to take the DNA sample is present, shall be submitted to the court before the sample is collected, see the draft *strpl. § 160A subsection*. The committee can not see any reason to determine that the appeal against the registration shall be granted suspensive effect, see *the second paragraph*.

Access to the courts is seen as a key element of the right to a fair trial by ECHR Article 6 (1). The Committee therefore believes that it should be stated expressly in the law that the question of registration may be submitted to the courts, see the *third paragraph* and detailed above in Section 6.9.1. The reason why it is referred to the Civil Procedure Act, is to emphasize that the court treatment does not take place after the criminal process forms. The reference must be changed when the Civil Procedure Act of 17 June 2005 No. 90 comes into force.

In § 9 Retention of DNA profiles:

The provision deals with the storage of DNA profiles, and is based in part on PTI. § 11a-6.

A DNA profile appears as a numeric code of the biological material is analyzed, see further section 3.1.4.2. above. This electronically stored in the registers, and can also be printed on paper. After the *first paragraph, first sentence*, as well electronic as the paper-based profile only kept by the Registrar, see further section 6.8. above. Also, the analyst must be able to store the profile. If the analysis carried out in Norway, the forensic commission need to ensure the quality of the person who conducted the analysis and the analysis results, and when it is convenient that the material is also available in the analyst. However, it is not possible to keep a paper-based registry in the police districts. The paper-based profile will not be disclosed to either the prosecution or the defense, see *first paragraph, second sentence*. Anyone who is registered can still request printing of his DNA profile, see *first paragraph, third sentence*. The reason for this rule is that it is registered, should be entitled to require the profile with a view to the tried analyzing the results of another expert. As long as one uses independent experts, however, there will be little need for such a review, see Recommendation No. R (92) 1 from the Committee of Ministers of 10 February 1992 No. 9 where the requirement for equality between the parties in the process can be addressed through the use of independent experts. But No Recommendation. R (92) 1 from the Committee of Ministers of 10 February 1992 No. 3, first paragraph requires that the sample is taken from, can get information about the sample. Other information shall be as stated in the draft § 7, is not given out.

After PTI. § 11a-6 to register information for using the methods approved by the Ministry of Justice. Committee finds that there are privacy authority should be responsible for the guidelines for the storage of register information, see the draft of *the second paragraph*.

The third paragraph gives the King in Council the authority to issue further regulations concerning the storage and recording of DNA profiles.

In § 10 Responsibility for DNA analysis and storage of biological material:

The provision deals with who is responsible for DNA analysis and storage of biological material. The provision is based on the PTI. § 11a-6 third and fourth paragraphs.

DNA analysis can be a crucial evidence in criminal cases. It is therefore important that the analysis is carried out by a body of high academic integrity, see further section 6.9.3. above. After the *first paragraph*, the King who is to perform the analysis.

Unlike current law, cf. PTI § 11a-6, fifth paragraph, first sentence, suggests the majority of the committee that it should be possible to store biological material, see the draft of *the second paragraph*. As stated in the draft material can only be held in accordance with the Act's purpose - ie to determine identity. There is no access to research material for other purposes, see further section 6.8. above.

It can also be a need to undertake further analysis of trace materials from the site. After PTI. § 11a-6, fifth paragraph, second sentence, the material is believed to be linked to an unsolved criminal cases kept as long as is appropriate. Committee finds that both trace evidence from unsolved as solved criminal cases should be retained, but as mentioned found that the detailed rules for this falls outside the Committee's mandate, see chapter 6.8. above.

In § 11 Retrieved from identity register:

The provision deals with deletion from identity register.

After PTI. § 11a-6, sixth paragraph, DNA profile will be deleted no later than two years after it registered the death. After the *draft, first sentence*, the committee proposes that this rule is replaced with a "can do" rule. It can not be ruled out that the registry information can contribute to solving old crimes. The committee can not see why you should have an absolute rule that the information be deleted, see further section 6.9.1. above.

After the *second sentence*, the personal profile of the acquitted after resumption deleted from the register. In such a situation fails the basis for registration. If the person is sentenced for other factors that require registration, but that is not resumed, it should not be made deleted. The data, for example, convicted of two rapes, one of which the case resumed, while the other is not affected by the request for revision. Here, the enforceable part of the sentence in itself justify registration.

In § 12 Disclosure of information in the DNA registry to foreign law enforcement authority:

The provision concerning the disclosure of DNA profiles to foreign law enforcement authority. The reason we refer to chapter 6.7. above.

In § 13 Confidentiality:

The provision concerning confidentiality.

The selection is somewhat in doubt whether there is a need for a separate provision on confidentiality of information from identity register and track registry. The committee believes that the people who have access to records will be subject to the pole. § 24 Committee finds that there may be in order with a reference to § 24 and suggest such a determination here. By that provision also refers to strpl. § 61a, it is clear that even experts make DNA analysis has confidence information under the Act.

In § 14 Entry into force:

The provision deals with the Act.

The King in Council be empowered to decide when the law comes into force. The law should only be applied to offenses committed after the Act came into force.

9 bill

Law on legal procedure in criminal cases (Criminal Law) of 22 May 1981 No. 25

§ 157 should read:

He who with reasonable grounds suspected of an act which the law can lead to imprisonment, may be subjected to physical examination when it is believed to be of importance for the information of the case and does not appear to be a disproportionate interference. There may be blood and performed other tests that can be done without danger or significant pain.

These rules apply even if the penalty cannot be imposed because of the provisions of Penal Code § § 44 or 46 It also applies when the state has meant that the suspect does not have guilt.

No suspects consent to investigation only made by order of the court. As far as possible and advised he will be allowed to comment before the decision is made.

If the purpose of the survey might otherwise be forfeited, the orders of the prosecutor take the place of ruling by the court. The order shall be in writing and reasoned. Is there a risk of delay, the order is given orally, but must then be recorded as soon as possible.

§ 160 should read:

Notwithstanding the above rules may, in accordance with regulations by the King, take fingerprints and photographs of persons suspected or convicted of an act which the law can result in imprisonment. The rule of § 157, *second* paragraph applies correspondingly. It can also be taken fingerprints and photographs of persons who are decided expelled or extradited to a foreign state.

§ 160A is amended as follows:

Notwithstanding § 157, first paragraph may be obtained from biological material in order to conduct a DNA analysis of the person with reasonable grounds suspected of an offense under the Act may result in imprisonment. The rule of § 157, second paragraph applies correspondingly.

With the consent in writing, may be obtained from biological material in order to conduct a DNA analysis without regard to whether there are reasonable grounds for suspicion. The analytical result and the biological material destroyed when the purpose of this study is achieved.

The biological material collected by the police. Refusing the suspect to contribute to the necessary investigation must not use force without the right of decision has ruled that the conditions for taking DNA sample is present.

When the conditions in the first paragraph are met, it can also be obtained biological material after the case is legally settled. DNA test can also be obtained by a person who qualifies for registration in the DNA registry for law on DNA database for use in criminal justice from § 3, third paragraph. Refuse the person to submit a biological material voluntarily, such material can be obtained by force when this can be done without danger or significant pain.

The biological material is meant in this provision, saliva, and cell samples from the oral cavity. The King in Council may decide that other biological material to be covered by this provision.

Act on DNA database for use in criminal justice should read

§ 1 The purpose

The purpose is to facilitate the effective investigation of criminal cases on the basis of certain established identity by use of DNA detection.

§ 2 Definitions

In this Act, with:

- 1. DNA Profile: an analysis of biological samples to determine a person's identity*
- 2. identity register: DNA profile from the person with a known identity, as well as information about the personal and the basis for registration (identity profile)*
- 3. Tracks registry: DNA profile from the person of unknown identity, as well as information about the profile's connection to unsolved criminal cases (track profile).*

§ 3 Identity Register

It imposed a sentence or was not charged by the Criminal Procedure Act, § 69 for an act which the law can lead to freedom of staff, may be registered in the identity register. Registration can only occur when the decision is final or the case is finally decided. Action is issued fixed penalty notices for, does not provide a basis for registration.

Person can not be sentenced to punishment because of the provisions of Penal Code § § 44 or 46, can be registered. The same applies when the state has meant that the person does not have guilt.

When the conditions in the first paragraph are met, the person who has a residence or work in the realm recorded if a sentence is imposed abroad. The same applies when the penalty is not imposed as a result of the matters referred to in the second paragraph.

The requests for reasons that are adequate may be registered in the identity register.

The police make decisions concerning registration of the first paragraph. Decision on registration for the second and third joints are made by the prosecutor.

The King in Council may make supplementary regulations relating to registration of the identity register.

§ 4 Track Registry

Track profile can be recorded in the trace register when the profile is assumed to be linked to unsolved criminal cases. The Registrar has responsibility for ensuring that profiles are recorded, and makes decisions about registration. The profile shall be recorded as soon as it is made.

The King in Council may make supplementary rules on slot register.

§ 5 Search for identity and trace register

Identity profile obtained under the Criminal Procedure Act, § 160A subsection can be applied to the trace register.

Identity Profile in identity register can be searched against the trace register.

Track profile can be searched against the identity register and track registry.

DNA profile from unidentified same may be sought against the identity register and track registry.

§ 6 Paying Agent

The King in Council determines who is responsible registrar to register under this Act. Only the registrar has access to the Registry. The King in Council may determine that the carrying out DNA analysis can be given access to the register, as well as rules for communication between the registrar and the person who performs DNA analysis.

§ 7 Access

Anyone who is registered in the identity register shall immediately be notified of this. Others may not be given information about the register's contents.

§ 8 Appeals

Anyone who believes the improper registered under § 3, may appeal to the immediately superior prosecutors. The provisions of the Public Administration Chapter VI apply as appropriate.

The appeal has no suspensive effect.

Anyone who believes the incorrect record may bring proceedings concerning the lawfulness of the decision by the Civil Procedure Act.

§ 9 Storage of DNA profile

DNA profile can only be kept by the Registrar and the carrying out DNA analysis. It is not possible to provide printing of DNA profile. Anyone who is registered may still require a written record of their own DNA profile.

Registry information is recorded and stored by methods approved by the Privacy Authority.

The King may issue further regulations concerning the storage and recording of DNA profiles.

§ 10 Responsibility for DNA analysis and storage of biological material

The King in Council determines who is to produce a DNA profile.

In accordance with the Act's purpose, samples of biological material kept by the person who conducted the DNA analysis.

§ 11 Retrieved from identity register

Identity profile can be deleted when the data is dead. Identity Profile to be deleted if the data is acquitted after the resumption.

§ 12 Disclosure of information in the DNA registry to foreign police

The registrar may, in accordance with the purpose disclose information from DNA registry to foreign law enforcement authority. The King may issue further rules on disclosure of information pursuant to this provision.

§ 13 Confidentiality

Police Act § 24 and § 61a of the Criminal Code applies equally to information under this Act.

§ 14 Entry into force

This Act comes into force from the time the King in Council determines.