

**Federal Law  
on the use of DNA profiles  
in criminal proceedings and identification  
of unknown or missing  
(Law of DNA profiles)**

of June 20, 2003 (State December 28, 2004)

*The Federal Assembly of the Swiss Confederation*

saw the art. 119 and 123, al. 1 of Constitution<sup>1</sup>, saw the message from the Federal Council of 8 November 20002,

hereby:

**Section 1 General Provisions**

**Art. 1** Aim and purpose

1 This Act establishes the conditions under which DNA profiles:

- a. can be used in criminal proceedings;
- b. can be seized in a federal information system.

2 It is intended to increase the effectiveness of criminal prosecution for:

a. use the comparison of DNA profiles in order:

- 1. identify suspects and to remove suspicions about other people,
- 2. promptly detected by systematic analysis of biological material, the elements common to various offenses including identifying groups of criminals operating in an organized manner, the serial criminals and repeat offenders,
- 3. contribute to the production of evidence;

b.

comparison of DNA profiles in the context of judicial and administrative assistance in enforcement.

3 The law also regulates the identification by comparing DNA profiles of unknown persons, missing or dead, out of criminal proceedings.

**Art. 2** Profile of DNA and purpose of its use

1 The DNA profile is an alphanumeric code unique to each individual who is prepared, using techniques of molecular biology, from noncoding sequences of genetic material DNA.

2 It is prohibited, in the DNA analysis to try to determine the health status or other characteristics of the person concerned, except sex.

3 DNA profile and the sample may only be used for purposes other than those provided in this Act (art. 1).

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## **Section 2 Sample Collection and analysis of DNA**

**Art. 3** Collection of samples and DNA analysis in criminal proceedings

1 To solve a crime or a crime, a sample, such as a smear of the buccal mucosa can be performed for analysis of DNA on the following persons (persons involved):

- a. suspects;
- b. others, including victims and persons authorized to visit the scene of the offense if it is necessary to distinguish their tracks from those suspects.

2 In surveys of large companies to solve a crime, a sample, such as a smear of the buccal mucosa can be performed for analysis of DNA from persons with specific characteristics found in connection with the commission of the act, to exclude that they could be the perpetrators or to confuse them.

3 Subject to a major survey, no analysis of the sample is performed before it is established that the conditions for entering the DNA profile in the system information (art. 11) are met.

**Art. 4** Recording traces and sampling of deceased persons

A DNA profile is derived from biological material that has to do with offense (trace) or from samples from deceased persons if concrete evidence suggests that this measure is useful in the elucidation of the crime or offense.

#### **Art. 5** Collection of samples and DNA analysis persons convicted

Immediately after the entry into force of the trial, a sample can be taken and a DNA profile drawn on the people:

- a. who have been sentenced for the intentional commission of a crime carrying a prison sentence of more than one year;
- b. who have been convicted of a felony or a crime committed intentionally against life and bodily integrity and against the sexual integrity;
- c. against whom an action or internment was pronounced.

#### **Art. 6** Identification outside of criminal proceedings

**1** When identification is not possible otherwise, profiles DNA can be established outside of the criminal proceedings:

- a. deceased persons;
- b. people who can provide information on their identity, because of their age, accident, illness lasting disability, mental disorder or impairment of consciousness.

**2** The biological material of these people may also be analyzed if it is likely to contribute to their identification.

**3** The biological material of missing persons may be analyzed in preparation for their identification.

**4** The DNA profiles of relatives of a person alleged to be identified can be established for purposes of comparison with their written consent.

#### **Art. 7** Authorities ordering measures

**1** The police authority for criminal investigation or criminal court (the authorities ordering the measures) may order:

- a. non-invasive removal of samples from individuals (art. 3, para. 1) and analysis of these samples to establish a DNA profile;
- b. trace analysis and samples of deceased persons for the establishment a DNA profile (art. 4).

**2** When the police ordered a sampling, it shall inform the person concerned of his right to appeal that decision to the authority of criminal investigations. In case of dispute, enforcement of the levy is effected only if the competent criminal investigation confirms the decision.

**3** The judicial authorities shall decide on:

- a. implementation of major investigations (art. 3, para. 2);
- b. the invasive sample collection and analysis for establishing a DNA profile.

**4** The authority decides the trial sampling and analysis for establishing a DNA profile of convicted persons (art. 5).

**5** If another authority is responsible for identifying the meaning of art. 6, it may also order a sampling and analysis for establishing a DNA profile.

### **Section 3 Organization of DNA**

#### **Art. 8 Analysis of DNA**

**1** The Department of Justice and Police (Department) designates the laboratories authorized to conduct DNA analysis under this Act.

**2** The authority ordering the measures is completing testing in a laboratory within the meaning of para. 1.

**3** The sample has a number of control processes to make anonymous the same number is assigned to data on the identity of the person in question and other identifying data (photographs, fingerprints).

**4** Do not be communicated to the laboratory with the sample and data necessary to establish the DNA profile and determination of its probative value, such as those concerning the race of the person in question, where was committed the offense or where the traces were found.

#### **Art. 9 Destruction of samples**

**1** The authority who ordered the measure is to make the destruction of the sample taken from a person:

- a. if the DNA profile of the person in question has already been established;
- b. after three months from the date of levy, if that authority has required analysis;
- c. it proved that the person in question may be the perpetrator or crime;
- d. After identifying the person as provided in Art. 6.

**2** The laboratory destroyed the sample taken from a person upon the DNA profile satisfies the quality requirements for its entry into the information system based on DNA profiles (art. 10 to 13), but later than three months after it approved.

### **Section 4 Information System based on DNA profiles**

#### **Art. 10 Principle**

**1** The information system based on DNA profiles allows for the comparison of DNA profiles for criminal prosecution and identification of persons missing or unknown.

**2** The information system is managed exclusively by the Confederation.

#### **Art. 11 Entering into the information system**

**1** are entered into the information system of DNA profiles:

- a. suspected of having committed a crime or a crime or have participated (section 3);
- b. of sentenced persons (Article 5);
- c. people died and traces (Section 4).

**2** Are Seized In addition, the information system of DNA profiles:

- a. unidentified persons, living or dead (art. 6. 1);
- b. biological materials due to missing persons (art. 6. 3);
- c. Parents of missing or deceased persons to be identified out of criminal proceedings (Art. 6, para. 4).

**3** Are Seized in the information system, whether a condition specified in paras. 1 and 2 is completed, the DNA profiles sent from abroad through international collaboration and procedures used in Switzerland (art. 13).

**4** Do not take in the information system of DNA profiles:

- a. identified victims (art. 3, para. 1 letter. b);
- b. persons allowed to visit the scene of a crime and whose traces should be distinguished from those of the author (art. 3, para. 1 letter. b);
- c. individuals which were found during an extensive investigation to solve a crime, they could be perpetrators (Art. 3, para. 2);
- d. individuals from whom it proved that they could be perpetrators of crime or crime of which they were suspected;
- e. persons involved in proceedings which culminated in a dismissal.

## **Art. 12** Federal authorities charge

**1** The Federal Council designates the lead federal agency information system (office) by the Federal Law of June 19, 1992 on the protection of données<sup>3</sup>.

**2** recognized laboratories can be connected online information system. The department decides the connection.

## **Art. 13** International Collaboration

**1** The Office may, within the limits of cooperation with Interpol provided in ss. 351ter and 351quinquies Penal Code (PC) 4, transmit requests for comparing DNA profiles from abroad and present the Swiss requests to foreign authorities.

**2** International collaboration is subject to compliance with the principles applicable to sampling for the purposes of this Act and the assurance that the comparison of DNA profiling is performed by reliable criteria.

## **Section 5** Treatment of other data

### **Art. 14**

**1** The authority ordering the measures to notify the agency the data in its possession concerning the identity of the persons involved and the place where the crime was committed and where the traces were found (other data) .

**2** The office deals with other data in a separate background information system based on DNA profiles.

**3** The DNA profiles are related to other data by the number of process control. The office is only authorized to make this link.

## **Section 6 Data Protection**

### **Art. 15 Right to be informed**

**1** The authority ordering the measures inform the person concerned, before the levy, seizure of his DNA profile information system, its right to be informed and conditions required to ensure that data are erased.

**2** Everyone has the right to ask the office if a DNA profile was entered under his name in the information system.

**3** The right to be informed of the situations in which communication information may be denied, restricted or deferred are governed by ss. 8 and 9 of the Federal Act of June 19, 1992 on data protection.

### **Art. 16 Clearing DNA profiles of people**

**1** The Office clears the DNA profiles of persons established under ss. 3 and 5:

a. as soon as he is, during the proceedings that the person in question may be the perpetrator of the crime or offense;

b. when the person concerned is deceased;

c. when the procedure in question is terminated by an acquittal entered into force;

d. One year after the dismissal;

e. five years after the trial period in case of suspension of execution of sentence;

f. five years after payment of a penalty or after the termination of a community service.

**2** In the cases mentioned in para. 1 letter. c and d, the DNA profile is not deleted when the acquittal or the dismissal was decided because of irresponsibility of the author.

**3** The Office clears after 30 years all the DNA profiles that have not already been erased under para.

1. A further deletion within the meaning of para. 4 is reserved.

**4** When the person serving a custodial sentence is interned or triggers a therapeutic measure, the Office clears his DNA profile 20 years after the release of the imprisonment or confinement, or after the end of the therapeutic measure in question.

### **Art. 17 Erasing subject to authorization**

**1** In the cases referred to in Art. 16 para. 1 letter. e and f, and 4, the Office submits the cancellation to the approval of the competent judicial authority. It can refuse if there is suspicion concerning a specific crime or a misdemeanor not specified or if there is reason to fear a recurrence.

**2** The board may waive request approval of a foreign authority.

#### **Art. 18** Clearing DNA profiles derived from traces and samples from deceased persons

The act removes the DNA profiles established under Art. 4 from traces and samples taken from deceased persons:

- a. at the request of the authority who ordered the measure, it requires erasing the tracks as soon as may be assigned to a person who is excluded whether the perpetrator of the crime or offense;
- b. automatically after 30 years, except in cases of statutory limitations.

#### **Art. 19** Clearing DNA profiles established outside criminal proceedings

DNA profiles established outside criminal proceedings under art. 6 are deleted as soon as the person concerned has been identified, and in all cases after 50 years.

### **Section 7 Financing**

#### **Art. 20**

**1** The Confederation shall bear the costs of implementing and operating information system.

**2** The authority ordering the measures bear the costs incurred in the collection and transmission of samples as well as analysis and evaluation.

#### Section 8 Final Provisions

#### **Art. 21** Enforcement by the cantons

The cantons are responsible for enforcement in their area of jurisdiction.

#### **Art. 22** Enforcement by the Confederation

The Federal Council shall issue the implementing provisions governing particular:

- a. processing data in accordance with this Act, including data entry into the information system;
- b. the procedures for the identification of unknown persons, living or dead, and missing persons;
- c. organization and preparation process of DNA profiling;
- d. the requirements for recognition of laboratories and procedure;

- e. communication to the Office of the close of the proceedings;
- f. entering DNA profiles established abroad.

**Art. 23** Transitional provisions

**1** This Act also applies to DNA profiles already entered into the information system according to the order of May 31, 2000 on the information system based on DNA profiles (order ADNS).

**2** Provisional recognition of laboratories provided under art. 20 of the ADNS order has effect for two years after the entry into force of this Act.

**3** A sample can be collected and an analysis of DNA prepared and entered into the system information of persons who, before the entry into force of this Act, have been sentenced to imprisonment without suspension more than one year, or against whom a deprivation of liberty provided for in art. 42, 43 or 100bis CP7 has been made, so long as the deprivation of liberty or deprivation of liberty, but only until one year after the entry into force of this Act.

**Art. 24** Referendum and entry into force

**1** This Act is subject to referendum.

**2** The Federal Council shall fix the date of entry into force.

National Council, June 20, 2003 Council of States, June 20, 2003

President: Yves Christen

Secretary: Christophe Thomann

President: Gian-Reto Plattner

The Secretary: Christoph Lanz

Timeout referendum and came into force

**1** referendum deadline applies to this Act has expired October 9, 2003 without have been utilisé.

**2** This Act comes into force on 1 January 2005.

December 3, 2004

On behalf of the Swiss Federal Council:  
The President of the Confederation, Joseph Deiss  
The Federal Chancellor Annemarie Huber-Hotz