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REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 5 of 2012

[L.S.]

AN ACT to repeal and replace the Deoxyribonucleic
Acid (DNA) Act, Chap. 5:34

[Assented to 10th May, 2012]

WHEREAS it is enacted *inter alia* by section 13(1) of ^{Preamble} the Constitution that an Act of Parliament to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by section 13(2) of the Constitution that an Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

PART I

PRELIMINARY

Short title	1. This Act may be cited as the Administration of Justice (Deoxyribonucleic Acid) Act, 2012.
Act inconsistent with the Constitution	2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Application	3. This Act applies to the investigation and prosecution of offences committed before, on or after the coming into operation of this Act.
Interpretation	4. For the purposes of this Act and where the context so requires— <ul style="list-style-type: none"> “accused” means a person who is charged with an offence; “buccal swab” means a swab taken from the inner cheek of a person to collect epithelial cells; “Central Authority” means the person or authority designated as the Central Authority for Trinidad and Tobago in accordance with section 3 of the Mutual Assistance in Criminal Matters Act; “child” means a person under the age of eighteen years; “complainant” means a person against whom an alleged sexual offence has been committed;

“Court” means a court of competent jurisdiction;

“crime scene” includes—

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

“Custodian” means a person appointed under section 8;

“detainee” means a person who is lawfully held in custody;

“DNA” means deoxyribonucleic acid;

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

“DNA profile” means a profile of the DNA of a person obtained through forensic DNA analysis and includes a partial profile;

“forensic DNA analysis” means the analysis of genetic material in order to determine a DNA profile for the purposes of criminal proceedings;

“Forensic DNA analyst” means a person who conducts forensic DNA analysis on behalf of the Trinidad and Tobago Forensic Science Centre;

“Forensic DNA Databank” means the databank established under section 7;

“incapable person” means a person who by reason of his physical or mental condition is unable to—

(a) indicate whether he consents or does not consent; or

(b) understand the implications of consenting or not consenting,

to the giving of a non-intimate or an intimate sample;

“insufficient” in relation to a sample, means insufficient in respect of quantity for the purpose of obtaining a DNA profile by means of forensic DNA analysis;

“intimate sample” means a specimen of biological or other material taken from—

(a) any part of a person’s genitals; or

(b) a person’s bodily orifice other than the mouth;

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

“juvenile residential facility” means St. Michael’s School for Boys, St. Jude’s School for Girls, Youth Training Centre or any other secured residential institution or part thereof designated for children;

“Minister” means the Minister to whom responsibility for forensic science services is assigned;

“non-intimate sample” means a specimen of—

(a) blood obtained by a prick of the finger;

(b) epithelial cells obtained by means of a buccal swab;

(c) plucked hair; or

(d) saliva;

“police officer” has the meaning assigned to it in section 3 of the Police Service Act; Chap. 15:01

“Protective Services” has the meaning assigned to it in section 2 of the Protective Services (Compensation) Act; Chap. 23:60

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

“representative” in relation to a child or incapable person means—

(a) a parent or legal guardian;

(b) any person over the age of eighteen years who has the custody, charge or care of the child or incapable person;

(c) an Attorney-at-law;

(d) a qualified social worker;

(e) a representative of the Children's Authority; or

(f) a person appointed by the Court;

“sample” means a non-intimate or intimate sample;

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

“stain” means a residue of bodily fluid or biological material which may or may not be readily visible to the naked eye;

“suspect” means a person whom the police have reasonable grounds for believing—

- (a) is about to commit an offence; or
- (b) may have committed an offence, and who is being investigated by the police in relation to that offence;

“unsuitable” in relation to a sample means deficient in respect of quality for the purpose of obtaining a DNA profile by means of forensic DNA analysis.

PART II

FORENSIC DNA LABORATORIES

Official forensic DNA laboratory

5. (1) The Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA laboratory for Trinidad and Tobago.

(2) The Trinidad and Tobago Forensic Science Centre shall have custody of and control over all DNA samples and DNA profiles, including the Forensic DNA Databank of Trinidad and Tobago.

(3) For the purposes of this Act, a register to be known as “the DNA Register” shall be established by the Trinidad and Tobago Forensic Science Centre.

Cooperation with accredited laboratories

6. The Government may, for the purpose of obtaining forensic DNA services, enter into an agreement with a laboratory that is—

- (a) accredited by an international accrediting body listed in the First Schedule; and
- (b) approved by the Minister by Notification.

First Schedule

PART III

THE NATIONAL FORENSIC DNA DATABANK OF TRINIDAD AND TOBAGO

DNA profiles may be kept indefinitely in Forensic DNA Databank

7. (1) There shall be a DNA databank to be known as “the National Forensic DNA Databank of Trinidad and Tobago” which shall comprise an electronic or other

collection of DNA profiles attributed to individuals or crime scenes.

(2) Subject to section 26, DNA profiles stored in the Forensic DNA Databank shall be kept indefinitely.

8. (1) There shall be a Custodian of the Forensic DNA Databank who shall be a public officer and shall be responsible for receiving and storing all DNA profiles—

Appointment of
Custodian and
Deputy Custodian

(a) from the Trinidad and Tobago Forensic Science Centre; or

(b) submitted to the Government pursuant to an agreement under section 6,

and for carrying out searches against the Forensic DNA Databank.

(2) There shall be a Deputy Custodian of the Forensic DNA Databank who shall—

(a) be a public officer; and

(b) in the absence or incapacity of the Custodian, act in his place.

(3) The Custodian shall be provided with—

(a) adequate staff; and

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

to assist in the performance of his functions and duties.

9. (1) Without prejudice to the power of the Public Service Commission to make an appointment to the office of Custodian or Deputy Custodian, where prior to the making of the first appointment, after the Act comes into operation, the exigencies of service require a person to perform functions related to that office, the Minister may engage a person on contract, in order to secure the interests of the Forensic DNA Databank.

Transitional

(2) The engagement of a person on contract under subsection (1) shall be in accordance with the guidelines for contract employment established by the Chief Personnel Officer.

Functions and duties
of Custodian

10. The Custodian shall—

- (a) maintain the Forensic DNA Databank;
- (b) conduct searches against the forensic DNA Databank;
- (c) ensure that DNA data is securely stored and remains confidential;
- (d) perform such functions and duties as may be required of him under this Act or any other written law,

and in the exercise of such functions, act independently.

Report

11.(1) The Custodian shall, within three months after the end of each calendar year, submit an annual report of his operations to the Minister.

(2) The Minister shall cause the report referred to in subsection (1) to be laid in Parliament within one month of his receipt of the report or as soon as practicable thereafter, but not later than six months after receipt.

PART IV

OBTAINING NON-INTIMATE AND INTIMATE SAMPLES

Persons may
volunteer to give a
sample

12. A person may volunteer to give a sample for forensic DNA analysis and shall for that purpose complete and submit the form set out as Form 1 in the Second Schedule.

Form 1 Second Schedule

Obtaining a
non-intimate sample
without consent

13.(1) Subject to subsection (2), a police officer or qualified person shall take a non-intimate sample from a person without his consent where—

- (a) the person is a suspect, detainee or accused;
- (b) a stain derived from a crime scene exists and there are reasonable grounds for suspecting that that person was involved in the offence and for believing that forensic DNA analysis could confirm or disprove such suspicion;

- (c) the person has had a non-intimate sample taken and that sample—
 - (i) has proved to be either unsuitable or insufficient for forensic DNA analysis;
 - (ii) is lost or destroyed; or
 - (iii) cannot be used for any other reason; or
- (d) the person is not a victim of an offence, attends a crime scene and is required by an investigating officer to give a non-intimate sample.

(2) No one other than a qualified person shall take a non-intimate sample from a person without his consent where—

- (a) the person is—
 - (i) admitted to a hospital; and
 - (ii) suspected, accused or convicted of an offence;
- (b) the person is detained in a prison or other institution to which the Prisons Act applies; Chap. 13:01
- (c) the person is an incapable person who is—
 - (i) admitted to a psychiatric hospital in accordance with the Mental Health Chap. 28:02 Act; and
 - (ii) suspected, accused or convicted of an offence; or
- (d) the person falls under the supervision of a juvenile residential facility and has been charged with or convicted of a criminal offence.

(3) A sample under subsection (2)(c) shall be taken in the presence of a witness.

14.(1) Where a repeat non-intimate sample is to be taken under section 13(1)(c), a police officer shall cause a notice to be served personally on the person from whom the non-intimate sample is to be taken or in the

case of a child or an incapable person, on his representative.

(2) A person, other than a person referred to in subsection (6), who is given notice in accordance with subsection (1) shall, within twenty-four hours of the time of personal service, attend a police station.

Form 2 Second Schedule (3) A notice given under this section shall be in the form set out as Form 2 in the Second Schedule.

(4) A police officer may arrest without warrant any person referred to under subsection (2) who fails to comply with the notice.

(5) A person arrested under subsection (4) shall be released immediately after the taking of the repeat non-intimate sample, provided there is no other reason for which he could be lawfully detained.

(6) A repeat non-intimate sample shall, within twenty-four hours of the time of personal service of the notice, be taken by a qualified person from a person without his consent where—

- (a) the person is—
 - (i) admitted to a hospital; and
 - (ii) suspected, accused or convicted of an offence;
- (b) the person is detained in a prison or other institution to which the Prisons Act applies;
- (c) the person is an incapable person who is—
 - (i) admitted to a psychiatric hospital in accordance with the Mental Health Act; and
 - (ii) suspected, accused or convicted of an offence; or
- (d) the person falls under the supervision of a juvenile residential facility and has been charged with or convicted of a criminal offence.

(7) A sample under subsection (6)(c) shall be taken in the presence of a witness.

15.(1) A non-intimate sample shall be taken from a person specified in the Third Schedule without his consent.

Requirement for certain persons to give non-intimate sample Third Schedule

(2) The Commissioner of Police shall make arrangements for a non-intimate sample to be taken by a qualified person from a person specified in the Third Schedule.

(3) The Minister may by Order, subject to negative resolution of Parliament, amend the Third Schedule.

16.(1) Where a citizen of Trinidad and Tobago—

(a) is deported from any place outside Trinidad and Tobago; and

Non-intimate sample to be taken from deported citizens and detained persons

(b) has been convicted of, or has served a term of imprisonment for, an offence which would have been an indictable offence if it had been committed in Trinidad and Tobago,

a non-intimate sample shall, on that citizen's arrival in Trinidad and Tobago, be taken from him without his consent by a qualified person at any port of entry.

(2) Where a person who is not a citizen of Trinidad and Tobago is detained under the Immigration Act, a non-intimate sample shall be taken from him without his consent by a qualified person.

Chap. 18:01

(3) For the purpose of this section, "citizen of Trinidad and Tobago" and "port of entry" have the meanings respectively assigned to them by the Immigration Act.

17.(1) Where a person is reported missing, a police officer may collect and submit for forensic DNA analysis—

Missing persons, deceased persons and crime scenes

(a) any item belonging to or used by the missing person; or

(b) any sample by which a familial relationship to the missing person may be determined.

(2) A qualified person may take and submit for forensic DNA analysis any biological or other material from the body of a deceased person.

(3) A police officer or a qualified person may collect and submit for forensic DNA analysis anything attributable to a crime scene.

Complainants

18. (1) Where a report of the alleged commission of a sexual offence is made a police officer shall, without delay, make arrangements for a qualified person to examine the complainant.

(2) Subject to subsection (3), where a complainant is medically examined by a qualified person in the course of an investigation of a sexual offence, the qualified person may take a sample from the complainant with consent.

(3) Where a complainant is a child or an incapable person, a qualified person shall obtain the consent of the representative of that child or incapable person for the taking of a sample.

(4) A qualified person who proposes to take a sample from a complainant shall—

Form 3
Second Schedule

(a) obtain the consent of the complainant or his representative in the form set out as Form 3 in the Second Schedule before the sample is taken;

(b) inform the complainant or his representative that the sample may be the subject of a search and that his DNA profile will be stored in the Forensic DNA Databank; and

(c) inform the complainant or his representative of his right to withdraw his consent before the sample is taken.

Form 3
Second Schedule

(5) Where the complainant or his representative has consented to the taking of a sample, he may withdraw his consent in the form set out as Form 3 in the Second Schedule.

Conditions for taking
an intimate sample

19. A qualified person who takes an intimate sample from a person shall ensure that—

(a) it is taken in circumstances affording reasonable privacy to the person from whom the sample is being taken;

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

20. Where a sample is to be taken from a child or incapable person under this Act, the sample shall not be taken unless the representative of the child or incapable person is present when the sample is being taken. Right of child or incapable person to have representative present

21.(1) A person authorized under this Act to take a sample, or a person assisting such a person, may use reasonable force to take and protect the sample. Use of force

(2) Subsection (1) shall not apply where a sample is to be taken from a complainant.

PART V

PROCEDURE FOR TAKING NON-INTIMATE AND INTIMATE SAMPLES AND POST COLLECTION PROCEDURES

22. A police officer or qualified person who takes a sample from a person under this Act shall— Dealing with a DNA sample

- (a) place the sample in a container;

- (b) seal and label the container with an identifying mark;
- (c) place the container in a package;
- (d) seal the package; and
- (e) label the package with the same identifying mark that is shown on the label affixed to the container.

Storage and delivery
of package

23.(1) A police officer or qualified person who takes a sample from a person under this Act shall—

- (a) as soon as practicable, submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis;
- (b) ensure that between the time the sample is taken and the time of delivery to the Trinidad and Tobago Forensic Science Centre, the package containing the sample is properly stored; and
- (c) complete the form set out as Form 4 in the Second Schedule.

Form 4
Second Schedule

(2) A person who receives the package containing the sample at the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis shall—

- (a) ensure that the package is properly sealed, labelled and identifiable both by him and the police officer or qualified person who delivers the package; and
- (b) record the following information in the DNA Register to be established and maintained at the Trinidad and Tobago Forensic Science Centre:
 - (i) in the case of a police officer, the name, rank and service number;
 - (ii) in the case of a qualified person, the name, profession and place of employment;

- (iii) the identifying mark which is affixed to the package;
- (iv) the date and time the package was delivered to the Trinidad and Tobago Forensic Science Centre; and
- (v) the name and designation of the person receiving the package.

24.(1) Subject to subsection (2), a Forensic DNA Duties of Forensic DNA analyst analyst who conducts a forensic DNA analysis shall prepare and submit a certificate of analysis to the Commissioner of Police.

(2) Where a certificate of analysis is prepared in respect of any matter which is under investigation or before a Court, a Forensic DNA analyst shall submit that certificate of analysis to the relevant investigating officer.

(3) A Forensic DNA analyst shall submit a DNA profile obtained by him through forensic DNA analysis to the Custodian for storing in the Forensic DNA Databank.

(4) A Forensic DNA analyst shall be deemed to be a Government expert for the purposes of the Evidence Act.

Chap. 7:02

25.(1) Except in the case of:

Retention of sample

(a) offences referred to in the First Schedule to the Anti-Gang Act, 2011;

Act No. 10 of 2011

(b) offences referred to in Schedule 6 to the Administration of Justice (Indictable Proceedings) Act, 2011; or

Act No. 20 of 2011

(c) persons referred to in the Third Schedule,

a person from whom a sample has been taken under this Act or a person who is not suspected, accused or convicted of an offence, may not, before the expiration of

five years from the date of the generation of the DNA profile, apply to the Court for an order that the sample be destroyed and the DNA profile be expunged.

(2) A sample taken from a person suspected, detained or accused of an offence under subsection (1)(a) or (1)(b) shall be retained indefinitely.

(3) A sample taken from a person under subsection 1(c) shall be retained until ten years after retirement.

(4) The Trinidad and Tobago Forensic Science Centre shall, within three months after the end of each calendar year, provide the Commissioner of Police with—

- (a) a list of samples and DNA profiles which have been entered in the DNA Register and Forensic DNA Databank, respectively; and
- (b) a list of the samples and DNA profiles which are proposed to be destroyed and expunged, respectively.

(5) Where the Commissioner of Police, after consultation with the Director of Public Prosecutions, does not object to the destruction of a sample or the expungement of a DNA profile on a list referred to in subsection (4) within three months of receiving the list, the Trinidad and Tobago Forensic Science Centre may destroy the samples and expunge the DNA profiles.

Expungement of profile in certain circumstances

26.(1) Notwithstanding section 7(2), where the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of a complainant is no longer necessary in relation to a matter under investigation or before the Court he shall, in writing, notify the complainant or, where the complainant is a child or an incapable person, his representative, of the decision to expunge the DNA profile from the Forensic DNA Databank.

(2) A complainant or his representative shall, within three months of the date of the notification under subsection (1), indicate in writing to the Commissioner

of Police whether he objects to the expungement of his DNA profile from the Forensic DNA Databank.

(3) Where a complainant or his representative fails to indicate, after the expiration of three months from the date of the notification, whether he has an objection to the expungement of his DNA profile from the Forensic DNA Databank, the Commissioner of Police shall, in writing, inform the Custodian of the Forensic DNA Databank that the DNA profile may be expunged.

(4) Where the Custodian is informed, pursuant to subsection (3), that the retention of a complainant's DNA profile is no longer necessary, he shall take the necessary steps to have the DNA profile expunged from the Forensic DNA Databank.

(5) Notwithstanding section 7(2) and subject to subsections (6) and (7), a complainant or, where the complainant is a child or an incapable person, his representative, may apply to the Commissioner of Police to have his DNA profile expunged from the Forensic DNA Databank.

(6) Where an application is made under subsection (5) for a DNA profile to be expunged from the Forensic DNA Databank and the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of that complainant should not be expunged on the grounds that it is needed in relation to a matter under investigation or before the Court he shall, in writing, inform the complainant or his representative that the DNA profile will not be expunged on the grounds that it is needed in relation to a matter under investigation or before the Court.

(7) Where an application is made under subsection (5) for a DNA profile to be expunged from the Forensic DNA Databank and the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of the complainant is no longer necessary in relation to a matter under investigation or before the Court he shall, in writing,

inform the Custodian of the Forensic DNA Databank that the profile may be expunged.

(8) Where the Custodian is informed, pursuant to subsection (7), that the retention of a complainant's DNA profile is no longer necessary, he shall—

(a) take the necessary steps to have the DNA profile expunged from the Forensic DNA Databank; and

(b) notify the Commissioner of Police, in writing, that the complainant's DNA profile has been expunged.

(9) The Commissioner of Police, on receiving the notification referred to in subsection (8) from the Custodian of the Forensic DNA Databank, shall inform the complainant, in writing, that his DNA profile has been expunged from the Forensic DNA Databank.

(10) Notwithstanding section 7(2), where a sample is taken from a child, the Custodian shall cause the DNA profile derived from that sample to be expunged from the Forensic DNA Databank after the expiration of ten years from the date on which the profile was generated.

(11) Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence referred to in the First Schedule to the Anti-Gang Act, 2011 or Schedule 6 to the Administration of Justice (Indictable Proceedings) Act, 2011, the sample and DNA profile derived from that sample shall be destroyed and expunged from the Forensic DNA Databank, respectively, after the expiration of ten years from the date of exoneration.

(12) Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence other than those referred to in subsection (11), the sample and DNA profile derived from that sample shall be destroyed and expunged from the Forensic DNA Databank, respectively, after the expiration of five years from the date of exoneration.

PART VI

MISCELLANEOUS

27. The Government of Trinidad and Tobago may enter into an arrangement with the government of another country under which DNA data—

Arrangement with
foreign governments
to share DNA data

- (a) in Trinidad and Tobago, that may be relevant to the investigation of an offence against the law of that country, is provided to the appropriate authority in that country for the investigation of, or proceedings for, that offence; and
- (b) in that country, that may be relevant to the investigation of an offence in Trinidad and Tobago, is provided to the Commissioner of Police for the investigation of, or proceedings for, that offence.

28. (1) No proceedings, civil or criminal, shall be brought against a person using reasonable force in respect of the taking of a non-intimate or an intimate sample in accordance with this Act.

Immunity

(2) Subsection (1) shall not apply to any proceedings on the ground of any negligent act or omission in the taking of a non-intimate or an intimate sample.

29. (1) The Custodian or a person authorized by him may disclose DNA data to—

Disclosure and
confidentiality

- (a) a police officer acting in the course of a criminal investigation or proceeding;
- (b) the person from whom a non-intimate or an intimate sample was taken or his representative;
- (c) a country making a request, which is accepted by the Central Authority, for mutual assistance in criminal matters;
- (d) a Forensic DNA analyst making a request for a DNA profile;

- (e) a person who has obtained an Order of the Court for disclosure of DNA data;
- (f) a Court; or
- (g) a governmental agency, or an educational institution approved by the Minister for the sole purpose of research, provided that no personally identifiable information is disclosed.

(2) A person who discloses DNA data otherwise than in accordance with subsection (1), commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.

(3) The Custodian, the Deputy Custodian or any person employed or assigned duties at the Trinidad and Tobago Forensic Science Centre shall treat all records and information relating to DNA data as secret and confidential and shall make and subscribe to an oath of secrecy to that effect before a Justice of the Peace in the form set out as Form 5 in the Second Schedule.

Form 5 Second
Schedule

Offences

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

- (a) gives false information as to the existence of a DNA profile in the Forensic DNA Databank;
- (b) discloses or obtains DNA data or DNA profiles;
- (c) breaks the seal of or opens or causes to be opened any package;
- (d) in any manner tampers with or destroys a sample or the container or package containing a sample;
- (e) adds, deletes or modifies any information in the Forensic DNA Databank;
- (f) falsifies information required under this Act;

- (g) gains or attempts to gain access to the Forensic DNA Databank;
- (h) gains or gives access to a non-intimate or an intimate sample;
- (i) uses a non-intimate or an intimate sample; or
- (j) fails to submit DNA profiles to the Forensic DNA Databank,

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.

(2) A person who, for the purpose of providing a non-intimate sample or an intimate sample under this Act, impersonates any other person, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for ten years.

31. Where a person from whom a sample is to be taken under this Act, other than a complainant, refuses to give a sample, or otherwise obstructs or resists a police officer or a qualified person in the exercise of his functions under this Act, that person commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

32. (1) Where, before the coming into force of this Act, a person—

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

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

(2) The Commissioner of Police shall grant a request under subsection (1) where—

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

(b) the person referred to in subsection (1) volunteers to give a sample under section 12.

(3) The Commissioner of Police shall, in writing, inform a person who makes a request under this section of his decision to grant or deny the request within one month of receiving the request.

(4) Where the Commissioner of Police grants a request under this section, he shall make arrangements for the carrying out of the forensic DNA analysis requested as soon as practicable.

Documentary
evidence

33.(1) In any criminal proceedings a document purporting to contain information required to be recorded under this Act, is admissible as evidence of the facts and opinion stated in it without proof of the signature or appointment of the person who recorded the information, unless the Court, acting *ex proprio motu* or at the request of a party to the proceedings, requires that person to be called as a witness.

(2) The Court is not bound to require the attendance of that person as a witness if the Court is of the opinion that the request for such attendance is frivolous or vexatious or made for the purpose of delaying or defeating the ends of justice.

Regulations

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

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

Power to amend
Schedules

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

Validation

Chap. 5:34

36. Every act or thing done by the Trinidad and Tobago Forensic Science Centre under the purported authority of the Deoxyribonucleic Acid (DNA) Act, repealed by this Act, that would have been lawfully done if the Trinidad and Tobago Forensic Science

Centre were deemed to be an approved forensic DNA laboratory under that Act is hereby validated and declared to have been lawfully done.

37. The Deoxyribonucleic Acid (DNA) Act, ^{Repeal} Chap. 5:34, is hereby repealed.

38. Nothing in this Act shall affect any action taken or ^{Savings} any samples or DNA profiles obtained under the repealed Act prior to the coming into force of this Act and any DNA profile obtained before, on or after the coming into force of this Act from any crime scene and anything collected or any samples taken pursuant to the repealed Act, shall be admissible in evidence in any Court.

39. The Evidence Act is amended in section 19(4) by ^{Chap. 7:02 amended} inserting after paragraph (i) the following new paragraph:

“(j) a Forensic DNA analyst;”.

FIRST SCHEDULE

[Section 6]

INTERNATIONAL ACCREDITING BODIES

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

SECOND SCHEDULE

FORM 1

[Section 12]

REPUBLIC OF TRINIDAD AND TOBAGO

VOLUNTEERING A SAMPLE

Please Note that—

1. Under section 4 of the Administration of Justice (Deoxyribonucleic Acid) Act—

“intimate sample” means a specimen of biological or other material taken from—

- (a) any part of a person’s genitals; or
- (b) a person’s bodily orifice other than the mouth

“non-intimate sample” means a specimen of—

- (a) blood obtained by a prick of the finger;
- (b) epithelial cells obtained by means of buccal swab;
- (c) plucked hair; or
- (d) saliva

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

3. The representative of a child or incapable person shall be present when any sample is taken.

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

I,
(Name of Volunteer / Representative)

of
(Address)

understand the above notice and I hereby—

[Tick appropriate box]

[] Volunteer to give a sample to be used in the investigation or prosecution of

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

(Give details of alleged offences)

[] Volunteer to give a sample. I am required to attend

.....
(Give address/location of the crime scene)

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

in order
.....
.....
(Give details of purpose)

Signed Date
Volunteer/Representative

Signed Date
Witness

FORM 2

[Section 14(3)]

REPUBLIC OF TRINIDAD AND TOBAGO

NOTICE: TAKING A REPEAT NON-INTIMATE SAMPLE

Notice is hereby given, in accordance with section 14(3) of the Administration of Justice (Deoxyribonucleic Acid) Act, (“the Act”)

that you
(Name)

of.....
(Address)

are required to: (tick as appropriate)

attend the Police Station

avail yourself

within twenty-four hours from the date of service of this Notice upon you, for the purpose of having a repeat non-intimate DNA sample taken from you.

The previous sample taken from you was: (tick as appropriate)

unsuitable/insufficient for the purpose of obtaining your DNA profile

lost

destroyed

not useable because

.....
.....

Take Notice that section 14(4) of the Act authorizes a police officer to arrest without warrant a person who is not in police custody or imprisoned for failure to comply with this Notice.

.....
Name, Rank and Service Number of Police Officer Date of Service

.....
Signature of the above-named

FORM 3

[Section 18]

REPUBLIC OF TRINIDAD AND TOBAGO

CONSENT FOR TAKING A SAMPLE FROM A COMPLAINANT

Please Note that—

1. Under section 4 of the Administration of Justice (Deoxyribonucleic Acid) Act—

“intimate sample” means a specimen of biological or other material taken from—

(a) any part of a person’s genitals; or

(b) a person’s bodily orifice other than the mouth

“non-intimate sample” means a specimen of—

(a) blood obtained by a prick of the finger;

(b) epithelial cells obtained by means of buccal swab;

(c) plucked hair; or

(d) saliva

“sample” means a non-intimate or intimate sample

2. You are under no obligation to consent to a sample being taken.

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

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

5. A DNA profile obtained from your sample may be checked against other DNA profiles in the Forensic DNA Databank. You may apply, pursuant to section 26, to have your DNA profile expunged from the records of the Forensic DNA Databank.

6. Only a qualified person is entitled to take a sample from you.

A “qualified person” means—

a registered medical practitioner under the Medical Board Act, or a person registered under Part II or III of the Nurses and Midwives Registration Act, acting under the supervision of a registered medical practitioner.

A. Consent

I,of
(Name of person/representative giving consent)

.....
(Address)

further to a request being made by
(Name of qualified person making request)

hereby consent to the taking of a sample from

.....
(Signature of a person giving consent) (Place where consent is given)

In the presence of:

.....
(Name in block letters and signature of qualified person requesting consent)

at
(Place where consent is given)

Witnessed by

Signature of Witness

Date

B. Withdrawal of Consent

I, of
(Name of person/representative withdrawing consent)

.....
(Address)

further to giving my consent pursuant to section 18(4) of the Act for
a sample to be taken from
hereby withdraw my consent.

The reasons for withdrawing my consent are as follows:

.....
.....

Signed:

.....
(Signature of person / representative withdrawing consent)

.....
(Place where consent was withdrawn)

In the presence of:

.....
(Name in block letters and signature of qualified person requesting consent)

at
(Place where consent was withdrawn)

Witnessed by

Signature of Witness

Date

FORM 4

[Section 23]

REPUBLIC OF TRINIDAD AND TOBAGO

RECORD OF TAKING OF SAMPLE BY A POLICE OFFICER / QUALIFIED PERSON

INFORMATION OF PERSON FROM WHOM SAMPLE IS TAKEN:

Name:

Address:

Date of birth:

Gender of the person:

Type of sample: Non-intimate/Intimate [tick as appropriate]

Date taken:



INFORMATION TO BE COMPLETED BY PERSON TAKING SAMPLE:

Time and place of taking of the sample:

.....

I certify that both the container and the package holding the sample are labelled and sealed:

.....

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

.....

.....

The nature of the sample:

[Tick appropriate box]

[] Name, Rank and Service Number of the police officer taking the sample:

.....

[] Name, Profession and Place of Employment of the qualified person taking the sample:

.....

FORM 5

[Section 29(3)]

REPUBLIC OF TRINIDAD AND TOBAGO

OATH OF SECRECY

I, employed at/performing a function in the office of the Trinidad and Tobago Forensic Science Centre, do solemnly and sincerely swear that in the performance of my duties and functions in the service of the Trinidad and Tobago Forensic Science Centre, pursuant to the Administration of Justice (Deoxyribonucleic Acid) Act, I shall treat all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorized person or allow any such person to have access to any such record or information.

.....
Signature

DECLARED before me this day of
....., 20..... at the office of the
Trinidad and Tobago Forensic Science Centre.

.....
Justice of the Peace

THIRD SCHEDULE

[Section 15(1)]

A non-intimate sample shall be taken, without consent, from the following persons in accordance with section 15(1) of the Administration of Justice (Deoxyribonucleic Acid) Act—

1. A person who is employed, or applies for employment as:

- (a) an officer of the Protective Services; Chap. 26:30
- (b) a member of the Municipal Police Service; Chap. 25:04
- (c) a member of the Special Reserve Police; Chap. 15:03
- (d) a constable within the meaning of the Supplemental Police Act; Chap. 15:02
- (e) a member of the Defence Force; Chap. 14:01
- (f) a Customs Officer of the Customs and Excise Division; or Chap. 78:01
- (g) a private security officer.

2. A person who is employed or assigned duties at the Trinidad and Tobago Forensic Science Centre.

Passed in the House of Representatives this 9th day of November, 2011.

J. SAMPSON-MEIGUEL

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of 28 members of the House.

J. SAMPSON-MEIGUEL

Clerk of the House

Passed in the Senate this 8th day of February, 2012.

N. ATIBA-DILCHAN

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of 29 members of the Senate.

N. ATIBA-DILCHAN

Clerk of the Senate

Senate amendments were agreed to by the House of Representatives on the 26th day of April, 2012.

J. SAMPSON-MEIGUEL

Clerk of the House