

**ADMINISTRATION OF JUSTICE
(DEOXYRIBONUCLEIC ACID) ACT**

CHAPTER 5:34

Act
5 of 2012
11 of 2014

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UPDATED TO DECEMBER 31ST 2014

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

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Administration of Justice
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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on Amendment

Amendment to Evidence Act Ch. 7:02

Section 39 of Act No. 5 of 2012 amended the Evidence Act in section 19(4). This amendment has been duly incorporated into that Act.

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ADMINISTRATION OF JUSTICE
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An Act to repeal and replace the Deoxyribonucleic Acid (DNA) Act, No. 24 of 2007. 5 of 2012.

[10TH MAY 2012]

Commencement.

WHEREAS it is enacted *inter alia* by section 13(1) of 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: Preamble.

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

1. This Act may be cited as the Administration of Justice (Deoxyribonucleic Acid) Act. Short title.

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution. Act inconsistent with the Constitution.

3. This Act applies to the investigation and prosecution of offences committed before, on or after the coming into operation of this Act. Application.

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Interpretation.
[11 of 2014].

Ch. 11:24.

4. For the purposes of this Act and where the context so requires—

“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;

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“DNA Record” means a record either in textual or electronic format, that is kept in every place or institution which collects DNA samples, containing a record of every sample taken;

“exonerated”, in relation to a person, means —

- (a) a person who has been found not guilty by a Court at trial in relation to a particular offence;
- (b) a person who was charged with an offence and had his charges dismissed in relation to that particular offence; or
- (c) a person who has been otherwise discharged from criminal liability in relation to a particular offence;

“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 venous blood, or 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 pin prick;
- (b) epithelial cells obtained by means of a buccal swab;
- (c) plucked hair; or
- (d) saliva;

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

“private security officer” means a person licensed under any written law to provide security services including—

- (a) static or patrol services;
- (b) property for hire;
- (c) private investigations;
- (d) immobilisation of vehicles;
- (e) carrying out duties of selling, installing, repairing or servicing any electronic or mechanical security systems; or
- (f) monitoring or surveillance services,

to safeguard the physical welfare of any person, property or asset;

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

“qualified person” means—

- Ch. 29:50. (a) a registered medical practitioner under the Medical Board Act;
- Ch. 29:53. (b) an advanced practice nurse registered under Part II of the Nursing Personnel Act; or
- (c) a person registered under Part II or Part III of the Nursing Personnel Act, acting under the supervision of a 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

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

Official forensic DNA laboratory. [11 of 2014].

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

(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.

Co-operation
with accredited
laboratories.

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

First Schedule.

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

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.

Appointment of
Custodian and
Deputy
Custodian.

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—

- (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.

10. (1) The Custodian shall—

- (a) maintain the Forensic DNA Databank;
- (aa) have sole custody and control of the Forensic DNA Databank;
- (ab) have sole custody of all DNA profiles received by him for uploading unto the Forensic DNA Databank;
- (ac) determine the suitability of DNA profiles for uploading onto 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,

Functions and
duties of
Custodian.
[11 of 2014].

and in the exercise of such functions, act independently.

(2) The Custodian or any person acting under and in accordance with his general or special instructions under subsection (3) shall be deemed to be a Government expert for the purposes of the Evidence Act. Ch. 7:02.

(3) The functions of the Custodian under this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

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.

Form 1.
Second
Schedule.

Obtaining a
non-intimate
sample without
consent.
[11 of 2014].

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.

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; Ch. 13:01.
- (c) the person is an incapable person who is—
 - (i) admitted to a psychiatric hospital in accordance with the Mental Health Act; and Ch. 28:02.
 - (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 who shall certify having witnessed the taking of the sample in the form set out as Form 1A in the Second Schedule.

Form 1A.
Second
Schedule.

13A. Where a police officer is required to serve a summons on a person to appear before a Court as a defendant in a criminal case, the police officer may also serve on the person a Notice requiring that person to attend on such date and time and at such place as specified in the Notice for the purpose of giving a DNA sample.

Notice to attend
for giving a
DNA sample.
[11 of 2014].

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.

Taking a repeat
non-intimate
sample.
[11 of 2014].

(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.

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

Form 2.
Second
Schedule.

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

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(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 who shall certify having witnessed the taking of the sample in the form set out as Form 1A in the Second Schedule.

Ch. 13:01.

Ch. 28:02.

Form 1A.
Second
Schedule.

Requirement
for certain
persons to give
non-intimate
sample.
Third Schedule.
[11 of 2014].

Third Schedule.
Fourth Schedule.

Non-intimate
sample to be
taken from
deported
citizens.
[11 of 2014].

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

(2) A person specified in the Fourth Schedule shall make arrangements for the taking of a non-intimate sample 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 and the Fourth Schedule.

16. (1) Where a citizen of Trinidad and Tobago is deported from any place from outside of Trinidad and Tobago,

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a non-intimate sample shall be taken from that citizen without his consent upon his arrival in Trinidad and Tobago 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.

Ch. 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. [11 of 2014].

(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, qualified person, appropriately trained staff of the Trinidad and Tobago Forensic Science Centre or a first responder trained in crime scene sample collection may collect and submit for forensic DNA analysis anything attributable to a crime scene.

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.

Complainants.

(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—

- (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.

Form 3.
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. (1) 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. [11 of 2014].

(2) Where a sample is taken under subsection (1), the person taking the sample shall complete and submit the form set out as Form 6 in the Second Schedule.

Second Schedule.

21. (1) A person authorised 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.

23. (1) A person who takes a sample under this Act shall—

Storage and delivery of package. [11 of 2014].

- (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

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Form 4.
Second
Schedule

(c) complete the form set out as Form 4 in the 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 person who delivers the package; and
- (b) record such information as may be prescribed by Regulations.

DNA Record.
[11 of 2014].

23A. (1) In every place or institution where DNA samples are collected, a record entitled “DNA Record” shall be kept in which it shall be recorded every instance in which a sample is taken at such place or institution.

(2) The procedures for the keeping of the DNA Record shall be prescribed by Regulations.

Duties of
forensic DNA
analyst.
[11 of 2014].

24. (1) A forensic DNA analyst who conducts a forensic DNA analysis shall prepare and submit a certificate of analysis in accordance with subsections (2), (2A) and (2B).

(2) Where a certificate of analysis is prepared in respect of any matter which is under investigation or before a Court and that sample was taken and submitted by a police officer, a forensic DNA analyst shall submit that certificate of analysis to the relevant investigating officer.

(2A) A forensic DNA analyst shall submit a certificate of analysis that is prepared in respect of a sample taken—

- (a) by a qualified person; and
- (b) in relation to a matter under investigation or before the Court,

to the relevant investigating police officer, the Court or the relevant parties before the Court and a copy of the certificate of analysis shall be submitted to the relevant qualified person.

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(2B) A forensic DNA analyst shall submit a certificate of analysis that is prepared in respect of a sample taken—

(a) for the purpose of applying for employment as a person listed in the Third Schedule; or

(b) from a person specified in the Third Schedule, Third Schedule.

to the Custodian, who shall keep all certificates of analysis received by him strictly confidential and secured, unless he is required to disclose that certificate of analysis, pursuant to any written law or Order of the Court.

(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. Ch. 7:02.

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

25. (1) Subject to subsections (2), (3) and (4), where a sample is not destroyed during forensic DNA analysis, the Trinidad and Tobago Forensic Science Centre shall keep the sample for a minimum period of five years from the date on which the analysis was completed and thereafter the sample may be destroyed. Retention of sample.
[11 of 2014].

(2) Notwithstanding subsection (1), a Court may order that a non-intimate or intimate sample that has been taken under this Act, shall not be destroyed, if the Court is satisfied that the sample might reasonably be required for the investigation or prosecution of an offence or for the purposes of an appeal.

(3) Notwithstanding subsection (1), the Trinidad and Tobago Forensic Science Centre shall, within three months after the end of each calendar year, provide the Commissioner of Police and the Director of Public Prosecutions with a list of any samples which it proposes to destroy.

(4) Where the Commissioner of Police after consultation with the Director of Public Prosecutions does not object to the destruction of a sample on a list referred to in subsection (3) within three months of receiving the list, the Trinidad and Tobago Forensic Science Centre shall destroy the sample.

Expungement
of profile in
certain
circumstances.
[11 of 2014].

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, the DNA profile derived from that sample shall be destroyed and expunged from the Forensic DNA Databank, after the expiration of twenty years from the date of exoneration.

(12) Notwithstanding the destruction of a sample under section 25, where a DNA profile is retained from the period of the destruction of the sample to the twenty-year period at subsection (11), the profile is deemed to be the profile related to the sample destroyed and the profile may be used as evidence in any matter involving the person to whom the profile relates.

PART VI

MISCELLANEOUS

Arrangement
with foreign
governments to
share DNA
data.

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

Immunity.

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.

(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.

Disclosure and
confidentiality.
[11 of 2014].

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

- (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.

(1A) A forensic DNA analyst may disclose findings contained in certificates of analysis only when required to do so pursuant to—

- (a) an Order of the Court;
- (b) this Act; or
- (c) any other written law.

(2) A person who discloses DNA data otherwise than in accordance with subsections (1) and (1A), 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.

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

Offences.

- (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.

Refusal or obstruction when sample is being taken.

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.

Post-conviction forensic analysis.

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.

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.

Documentary evidence.

(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.

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

Regulations.

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

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

Power to amend Schedules.

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

Validation.

24 of 2007.

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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.

Repeal of Act
No. 24 of 2007.

37. The Deoxyribonucleic Acid (DNA) Act, No. 24 of 2007, is hereby repealed.

Savings.

38. Nothing in this Act shall affect any action taken or 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.

Section 6.

FIRST SCHEDULE

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).
-

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SECOND SCHEDULE

Section 12.
[11 of 2014].

FORM 1

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 venous blood, or 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 pin prick;
- (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.

5. The DNA sample voluntarily given will be analysed to create a DNA profile and such DNA profile may be checked against other DNA profiles in the Forensic DNA Databank.

I have read and understand the cautions given above.

Signed Date
Volunteer/Representative

Signed Date
Witness

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Sections 13 and
14.
[11 of 2014].

FORM 1A

REPUBLIC OF TRINIDAD AND TOBAGO

**FORM OF WITNESS PRESENT AT THE TAKING OF A
SAMPLE UNDER THE ADMINISTRATION OF JUSTICE
(DEOXYRIBONUCLEIC ACID) ACT, 2012**

I,
(Name of witness in block letters)

certify that I was present on the day of, 20.....

together with,.....
(Name of person taking sample in block letters)

and
(Name of person from whom sample taken in block letters)

at.....
(Place at which sample taken)

and did see the said
(Name of person taking sample in block letters)

take a sample from
(Name of person from whom sample taken in block letters)

.....
Name of witness to taking of sample

.....
Date

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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 authorises 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

Section 18.

FORM 3

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 venous blood or 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 pin prick;
- (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 analysed 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.

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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 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 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:

.....
.....

FORM 3—Continued

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

Section 23.
[11 of 2014].

FORM 4

REPUBLIC OF TRINIDAD AND TOBAGO

**RECORD OF TAKING OF SAMPLE BY A PERSON AND
CHAIN OF CUSTODY OF SAMPLE**

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:

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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 as appropriate]

Name (*in block letters*) and signature, rank and service number of police officer taking sample:

Dated:

Name (*in block letters*) and signature, profession and place of employment of the qualified person taking sample:

Dated:

I certify that I received a container and the package holding the sample which was labelled and the package was intact and the seal was unbroken:

Name (*in block letters*) and signature and profession of officer of the Trinidad and Tobago Forensic Science Centre receiving sample:

Dated:

Name (*in block letters*) and signature, profession and place of employment of any other person having custody of the sample at any time:

Dated:.....

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Section 29(3).

FORM 5

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 unauthorised 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

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FORM 6

Section 20.
[11 of 2014].

REPUBLIC OF TRINIDAD AND TOBAGO

**RECORD OF TAKING OF SAMPLE FROM A CHILD OR
AN INCAPABLE PERSON BY A POLICE OFFICER OR
QUALIFIED PERSON IN THE PRESENCE OF A
REPRESENTATIVE**

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*]

Person from whom sample is taken [*Tick as appropriate*]

a child

an incapable person

Date taken

In the presence of

*[Name in block letters and signature of representative of
child or incapable person and relationship to child or
incapable person]*

INFORMATION TO BE COMPLETED BY PERSON TAKING 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:

.....

.....

.....

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FORM 6—Continued

The nature of the sample

[Tick as appropriate]

[] Name (in block letters) and signature, rank and service number of police officer taking sample:

.....

Dated

[] Name (in block letters) and signature, profession and place of employment of the qualified person taking sample:

.....

Dated

I certify that I received a container and the package holding the sample which was labelled and the package was intact and the seal was unbroken:

[] Name (in block letters) and signature, profession of officer of the Trinidad and Tobago Forensic Science Centre receiving sample:

.....

.....

Dated

THIRD SCHEDULE

Section 15(1).
[11 of 2014].

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;
 - (b) a member of the Municipal Police Service;
 - (c) a member of the Special Reserve Police;
 - (d) a constable within the meaning of the Supplemental Police Act. Ch. 15:02.
 - (e) a member of the Defence Force;
 - (f) a Customs Officer of the Customs and Excise Division;
 - (g) an Immigration Officer of the Immigration Division; or
 - (h) a private security officer.

2. A person who is employed or assigned duties at the Trinidad and Tobago Forensic Science Centre and who is engaged in the collection or the receipt of samples or the conduct of forensic DNA analysis.

FOURTH SCHEDULE

Section 15.
[11 of 2014].

A non-intimate sample shall be taken by a qualified person, from a person specified in the Third Schedule, on the authority of the following persons in accordance with section 15(2) of the Administration of Justice (Deoxyribonucleic Acid) Act:

- (a) the Commissioner of Police, in respect of the—
 - (i) police service;
 - (ii) special reserve police; and
 - (iii) supplemental police;
- (b) the Chief Fire Officer, in respect of the Fire Service;
- (c) the Commissioner of Prisons, in respect of the Prison Service;
- (d) the Chief Officer, in respect of the Municipal Police Service;
- (e) the Chief of Defence Staff, in respect of the Defence Force;
- (f) the Comptroller of Customs, in respect of the Customs and Excise Division;
- (g) the Chief Immigration Officer, in respect of the Immigration Division; and
- (h) the employer, in respect of a private security officer.