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Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

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

THE ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID)
BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to repeal and replace the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34, which sought to use DNA information for forensic purposes, to classify tissue and body samples into two categories (intimate and non-intimate) and to distinguish the procedure by which each type of sample is obtained.

This Bill seeks to strengthen and expand the framework within which intimate and non-intimate samples can be taken for the purpose of forensic DNA analysis. The Bill provides for the taking of samples without consent from a suspect, detainee, accused or convicted person. The Bill also sets out the conditions under which DNA samples may be taken from victims of sexual offences, children or incapable persons, on grounds of national security, from citizens of Trinidad and Tobago who have been deported from any place outside this jurisdiction and from non-citizens who have been detained in Trinidad and Tobago under the Immigration Act. Other key features of the Bill include the establishment of a National Forensic DNA Databank; the appointment of a Custodian and Deputy Custodian who shall be responsible for receiving and storing all DNA profiles in the Forensic DNA Databank; the establishment and maintenance of a DNA register; a provision enabling the Government of Trinidad and Tobago to enter into arrangements with foreign governments to share DNA data; a provision regulating the destruction and retention of samples and a provision relating to the confidentiality of DNA data stored in the Forensic DNA Databank. The Bill would also provide that the Trinidad and Tobago Forensic Science Centre will be the official forensic DNA laboratory for Trinidad and Tobago.

The Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required, pursuant to section 13, to be passed by a special majority of three-fifths of the members of each House.

The Bill is divided into six parts.

PART I of the Bill comprises clauses 1 to 4.

Clause 1 would provide for the short title.

Clause 2 would provide that the Act shall have effect even though inconsistent with the fundamental rights and freedoms provisions of the Constitution.

Clause 3 would provide for the application of the Bill.

Clause 4 would provide for the interpretation of certain terms used in the Bill.

PART II of the Bill comprises clauses 5 to 6.

Clause 5 would establish the Trinidad and Tobago Forensic Science Centre as the official forensic DNA laboratory in Trinidad and Tobago.

Clause 6 would make provision for the Trinidad and Tobago Forensic Science Centre to enter into an agreement with an accredited laboratory for the purpose of obtaining forensic DNA services.

PART III of the Bill comprises clauses 7 to 11 and would provide for the establishment of a “National Forensic DNA Databank of Trinidad and Tobago”.

Clause 7 would provide that DNA profiles may be kept indefinitely in the Forensic DNA Databank.

Clause 8 would provide for the appointment of a Custodian and Deputy Custodian of the Forensic DNA Databank.

Clause 9 would provide for the resignation, or termination of the appointment, of the Custodian or Deputy Custodian.

Clause 10 would set out the functions and duties of the Custodian.

Clause 11 would provide that the Custodian should submit an annual report of his operations to the Minister and that the report should be laid in Parliament.

PART IV of the Bill comprises clauses 12 to 23 and makes provision for the taking of non-intimate and intimate samples.

Clause 12 would make provision for a volunteer to give a sample.

Clause 13 would provide the circumstances in which a non-intimate sample shall be obtained without consent. This would include taking a non-intimate sample from a suspect, detainee, accused or convicted person.

Clause 14 would provide the circumstances under which a repeat non-intimate sample may be taken.

Clause 15 would provide that specified categories of persons shall give a non-intimate sample.

Clause 16 would make provision for obtaining a non-intimate sample from a person on the grounds of national security.

Clause 17 would provide for the taking of a non-intimate sample from deported citizens of Trinidad and Tobago and from persons who are not citizens and are detained under the Immigration Act.

Clause 18 would make provision for forensic DNA analysis to be carried out on any item belonging to or used by a missing person, on any biological material found on the body of a deceased person, or on any other item attributable to a crime scene.

Clause 19 would provide that a police officer shall, without delay, make arrangements for an intimate sample to be taken from the alleged victim of a sexual offence. The consent of the alleged victim would not be required for the taking of the sample.

Clause 20 would provide that a qualified person, who takes an intimate sample, would be required to ensure that the sample is taken in private and that the procedure is carried out in a manner consistent with appropriate medical and professional standards.

Clause 21 would provide that samples taken from a person under this Act, shall be submitted to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis.

Clause 22 would provide that where a sample is to be taken from a child or incapable person, the child or incapable person shall have a representative present during the taking of the sample.

Clause 23 would provide that a person authorized under this Act to take a sample, may use reasonable force.

PART V of the Bill comprises clauses 24 to 25 and seeks to establish post collection procedures.

Clause 24 would provide for a certificate of analysis to be prepared and submitted by an analyst. The analyst is also required to submit DNA profiles to the Custodian for storage in the Forensic DNA Databank.

Clause 25 would provide for the retention of DNA samples and, in certain circumstances, for their destruction.

PART VI of the Bill comprises clauses 26 to 38 and would allow for miscellaneous provisions relating to the Act.

Clause 26 would provide for the Government of Trinidad and Tobago to enter into arrangements with foreign governments to share DNA data.

Clause 27 would provide for the establishment and maintenance of a DNA register by the police and qualified persons.

Clause 28 would provide immunity from civil and criminal proceedings for persons involved in the taking of intimate and non-intimate samples, except where there were negligent acts or omissions on the part of those persons when taking the sample.

Clause 29 would provide for the disclosure of information, in certain circumstances, by the Custodian and staff of the Trinidad and Tobago Forensic Science Centre.

Clause 30 would provide for offences and penalties.

Clause 31 would provide that a person who refuses to give a sample or otherwise obstructs or resists a police officer or a qualified person in the exercise of their functions, commits an offence.

Clause 32 would provide for the taking of samples at the request of persons who were convicted of an offence, or have filed an appeal against a conviction or sentence, prior to the coming into force of this Act.

Clause 33 would provide for the admissibility of documentary evidence.

Clause 34 would empower the Minister to make Regulations.

Clause 35 would empower the Minister to amend the First and Second Schedules.

Clause 36 would provide for the validation of acts or things done under the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34.

Clause 37 would provide for the repeal of the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34.

Clause 38 would provide a savings provision.

THE ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID)
BILL, 2011

Arrangement of Clauses

Clause

PART I

PRELIMINARY

1. Short title
2. Act inconsistent with the Constitution
3. Application
4. Interpretation

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FORENSIC DNA LABORATORIES

5. Official forensic DNA laboratory
6. Cooperation with accredited laboratories

PART III

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7. DNA profiles to be kept indefinitely
8. Appointment of Custodian and Deputy Custodian
9. Resignation and termination of Custodian and Deputy Custodian
10. Functions and duties of Custodian
11. Report

PART IV

OBTAINING NON-INTIMATE AND INTIMATE SAMPLES

12. Persons may volunteer to give a sample
13. Obtaining a non-intimate sample without consent
14. Taking a repeat non-intimate sample
15. Requirement for certain persons to give non-intimate sample

16. Obtaining non-intimate sample on grounds of national security
17. Non-intimate sample to be taken from deported citizens and detained persons
18. Missing persons, deceased persons and crime scenes
19. Victims of sexual offences
20. Conditions for taking an intimate sample
21. Samples to be submitted for forensic DNA analysis
22. Right of child or incapable person to have a representative present
23. Use of force

PART V

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24. Duties of analyst
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PART VI

MISCELLANEOUS

26. Arrangement with foreign governments to share DNA data
27. DNA register to be established and maintained
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FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

BILL

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

[, 2011]

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

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| Short title | 1. This Act may be cited as the Administration of Justice (Deoxyribonucleic Acid) Act, 2011. |
| 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 | <p>4. For the purposes of this Act and where the context so requires—</p> <p>“accused” means a person who is charged with an offence;</p> <p>“analyst” means a person who conducts forensic DNA analysis on behalf of the Trinidad and Tobago Forensic Science Centre;</p> <p>“buccal swab” means a swab taken from the inner cheek of a person to collect epithelial cells;</p> <p>“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;</p> <p>“child” means a person under the age of eighteen years;</p> |

“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;

“DNA register” means a register established under section 27;

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

“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) 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; or

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

“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;

“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.** The Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA laboratory for Trinidad and Tobago.

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—

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) DNA profiles stored in the Forensic DNA Databank may be kept indefinitely.

Appointment of Custodian and Deputy Custodian

8. (1) There shall be a Custodian of the Forensic DNA Databank who 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) The Minister shall appoint the Custodian from among suitably qualified persons on such terms and conditions as he thinks fit and the appointment shall be notified in the *Gazette*.

(3) The Minister shall appoint a Deputy Custodian from among suitably qualified persons on such terms and conditions as he thinks fit and the appointment shall be notified in the *Gazette*.

(4) The Deputy Custodian shall, in the absence or incapacity of the Custodian, act in his place.

(5) In the absence or incapacity of the Deputy Custodian, the Minister may appoint an acting Deputy Custodian.

(6) The remuneration of the Custodian and the Deputy Custodian appointed under this section shall be a charge upon the Consolidated Fund.

(7) 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) The Custodian or Deputy Custodian may resign his office in writing, addressed to the Minister.

Resignation and
termination of
Custodian and
Deputy Custodian

(2) The Minister shall terminate the appointment of the Custodian or Deputy Custodian, where the Custodian or Deputy Custodian—

- (a) is found to be of unsound mind or is incapable of carrying on his duties;
- (b) is declared bankrupt or compounds with his creditors;
- (c) is convicted of any offence which brings his office into disrepute;
- (d) is guilty of misconduct in relation to his duties;
- (e) misbehaves in office;

- (f) fails to carry out any of the duties or functions conferred on him under this Act; or
- (g) is incapable, for whatever reason, of performing his duties and functions under this Act.

(3) The resignation or termination of the Custodian or Deputy Custodian shall be notified in the *Gazette*.

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; and
- (d) perform such other functions and duties as may be required of him under this Act or any other written law.

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.

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 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) 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 Act; and Chap. 28:02
 - (ii) suspected, accused or convicted of an offence; or
- (d) the person falls under the supervision of a juvenile residential facility.

14.(1) Where a repeat non-intimate sample is to be Taking a repeat non-intimate sample 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 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.

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

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

(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 the Minister with responsibility for national security is of the opinion that a sample is required from a person in the interests of national security, he may, in writing, request the Commissioner of Police to make arrangements for a non-intimate sample to be taken from the person by a police officer. Obtaining non-intimate sample on grounds of national security

(2) A police officer may arrest without warrant any person to whom subsection (1) applies.

(3) A police officer may take a non-intimate sample from a person to whom subsection (1) applies without his consent.

(4) A person arrested under subsection (2) shall be released immediately after the taking of the non-intimate sample, provided there is no other reason for which he could be lawfully detained.

17.(1) Where a citizen of Trinidad and Tobago is deported from any place outside 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 police officer. Non-intimate sample to be taken from deported citizens and detained persons

(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) Notwithstanding subsection (1), where a citizen of Trinidad and Tobago was deported from any place outside Trinidad and Tobago prior to the coming into force of this Act, a non-intimate sample shall be taken from that citizen without his consent by a police officer.

(4) Where a non-intimate sample is to be taken under subsection (3), a police officer of the rank of Superintendent or above 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.

(5) A person who is given notice in accordance with subsection (4) shall, within twenty-four hours of the time of personal service, attend a police station.

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

(7) A police officer may arrest without warrant any person who fails to comply with a notice under this section.

(8) A person arrested under subsection (7) shall be released immediately after the taking of the non-intimate sample, provided there is no other reason for which he could be lawfully detained.

(9) For the purpose of this section, a “citizen of Trinidad and Tobago” has the meaning assigned to it by the Immigration Act.

Missing persons,
deceased persons
and crime scenes

18. (1) A police officer may collect and submit for forensic DNA analysis, any item belonging to or used by a person who is reported missing.

(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 may collect and submit for forensic DNA analysis anything attributable to a crime scene.

Victims of sexual
offences

19. (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 alleged victim.

(2) A qualified person may take such samples as he thinks fit from an alleged victim of a sexual offence without the consent of the alleged victim.

Conditions for taking
an intimate sample

20. 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;
- (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.

21. A police officer or qualified person who takes a sample from a person under this Act shall, as soon as practicable, submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis.

Samples to be submitted for forensic DNA analysis

22. 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

23. 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

PART V

POST COLLECTION PROCEDURES

24.(1) An analyst who conducts a forensic DNA analysis shall prepare and submit a certificate of analysis to a police officer or a qualified person.

Duties of analyst

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

Chap. 7:02

(3) An analyst shall be deemed to be a Government expert for the purposes of the Evidence Act.

Retention of sample

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 ten years from the date on which the analysis was completed and thereafter it may be destroyed.

(2) Notwithstanding subsection (1), a Court may order that a non-intimate or an 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.

(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 with a list of any samples which it proposes to destroy.

(4) Where the Commissioner of Police 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 may destroy the sample.

PART VI

MISCELLANEOUS

Arrangement with foreign governments to share DNA data

26. 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.

27. (1) A register to be known as “a DNA register” shall be established and maintained—

DNA register to be established and maintained

- (a) at each police station; or
 (b) by each qualified person who takes samples under this Act.

(2) A police officer or qualified person who takes a sample, shall record—

- (a) in the case of a police officer, in the DNA Register at the police station to which he is assigned; or
 (b) in the case of a qualified person, in his DNA Register,

the information specified in subsection (3).

(3) The information referred to in subsection (2) is as follows:

- (a) the name and address of the person from whom the sample was taken;
 (b) in the case of the police officer, the name, rank and service number;
 (c) in the case of the qualified person, the name, profession and place of employment;
 (d) the section of this Act under which the sample was taken;
 (e) the date and time the sample was taken; and
 (f) whether, in the case of a child or incapable person, his representative was present at the time of the taking of the sample.

Immunity

28.(1) No proceedings, civil or criminal, shall be brought against a person 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

29.(1) The Custodian or a person authorized 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 the non-intimate or an intimate sample was taken or his representative and the person from whom a request was made;
- (c) a country making a request, which is accepted by the Central Authority, for mutual assistance in criminal matters;
- (d) an 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 4 in the Second Schedule.

Form 4 Second Schedule

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 DNA 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 seven years.

Refusal or obstruction
when sample is being
taken

31. Where a person from whom a sample is to be taken under this Act 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 analysis requested as soon as practicable.

33. (1) In any criminal proceedings a document ^{Documentary evidence} 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.

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

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

35. The Minister may by Order amend the First and ^{Power to amend Schedules} Second Schedules.

36. Every act or thing done by the Trinidad and ^{Validation} Tobago Forensic Science Centre under the purported authority of the Deoxyribonucleic Acid (DNA) Act, ^{Chap. 5:34} 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 is hereby ^{Repeal} 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.

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) 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

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.

.....
Date of Service

.....
Signature of Police Officer

.....
Signature of the above-named

FORM 3

[Section 17(6)]

REPUBLIC OF TRINIDAD AND TOBAGO

NOTICE TO DEPORTED CITIZEN

Notice is hereby given, in accordance with section 17(3) of the Administration of Justice (Deoxyribonucleic Acid) Act, ("the Act")

that you
(Name)

of.....
(Address)

are required to attend the Police Station

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

Take Notice that section 17(7) of the Act authorizes a police officer to arrest without warrant a person for failure to comply with this Notice.

.....
Date of Service

.....
Signature of Police Officer

.....
Signature of the above-named

FORM 4

[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

Passed in the Senate this day of , 2011.

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 members of the Senate.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 32 of 2011

SECOND SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time

Second time

Third time