

**THE ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID) BILL, 2011**

List of Amendments made in the Senate on Tuesday 7th February, 2012

<p><i>First Column</i></p> <p><i>Clause</i></p>	<p><i>Second Column</i></p> <p><i>Extent of Amendment</i></p>
<p>4</p>	<p>A. Insert in the appropriate alphabetical sequence the following definitions:</p> <p>“complainant” means a person against whom an alleged sexual offence has been committed;</p> <p>“Forensic DNA analyst” means a person who conducts forensic DNA analysis on behalf of the Trinidad and Tobago Forensic Science Centre;</p> <p>“suspect” means a person whom the police have reasonable grounds for believing-</p> <p>(a) is about to commit an offence; or</p> <p>(b) may have committed an offence, and who is being investigated by the police in relation to that offence;”.</p> <p>B. In the definition of “non-intimate sample” insert the word “plucked” before the word “hair”.</p> <p>C. In the definition of “representative” –</p> <p>(i) delete the word “or” after the words “worker;”;</p> <p>(ii) insert the word “or” after the words “Authority;”;</p> <p>and</p> <p>(iii) insert after paragraph (e) the following new paragraph:</p> <p>“(f) a person appointed by the Court;”.</p> <p>D. Delete the definitions of “analyst” and “DNA register”.</p>
<p>5</p>	<p>Delete clause 5 and substitute the following clause:</p> <p>“Official forensic DNA laboratory</p> <p>5.(1) The Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA laboratory for Trinidad and Tobago.</p> <p>(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.</p>

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	<p>(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.”</p>
<p>7</p>	<p>In subclause (2) –</p> <ul style="list-style-type: none"> <li>(i) insert the words “Subject to section 26,” before the word “DNA” in the first place it appears; and</li> <li>(ii) delete the word “may” and substitute the word “shall”.</li> </ul>
<p>8</p>	<p>A. In subclause (1) insert the words “a public officer and shall be” after the word “be” in the second place in which it occurs.</p> <p>B. Delete subclauses (2) to (6).</p> <p>C. Insert the following new clause after subclause (1) and renumber accordingly:</p> <p>“(2) There shall be a Deputy Custodian of the Forensic DNA Databank who shall –</p> <ul style="list-style-type: none"> <li>(a) be a public officer; and</li> <li>(b) in the absence or incapacity of the Custodian, act in his place.”</li> </ul>
<p>9</p>	<p>Delete clause 9 and substitute the following clause:</p> <p>“Transitional</p> <p>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.</p> <p>(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.”</p>

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<p>10</p>	<p>Delete paragraphs (c) and (d) and substitute the following:</p> <p>“(c) ensure that DNA data is securely stored and remains confidential;</p> <p>(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.”</p>
<p>11</p>	<p>In subclause (2) insert the words “, but not later than six months after receipt” after the word “thereafter”.</p>
<p>13</p>	<p>A. In subclause (1) insert the words “or qualified person” after the words “police officer”.</p> <p>B. In subclause (2) –</p> <p>(i) delete the word “A”;</p> <p>(ii) insert the words “No one other than a” before the words “qualified person”; and</p> <p>(iii) in paragraph (d), insert the words “and has been charged with or convicted of a criminal offence” after the word “facility”.</p> <p>C. Insert the following new subclause after subclause (2):</p> <p>“(3) A sample under subsection (2)(c) shall be taken in the presence of a witness.”.</p>
<p>14</p>	<p>A. In subclause (6) –</p> <p>(i) insert the words “by a qualified person” after the word “taken”; and</p> <p>(ii) in paragraph (d), insert the words “and has been charged with or convicted of a criminal offence” after the word “facility”.</p> <p>B. Insert the following new subclause after subclause (6):</p> <p>“(7) A sample under subsection (6)(c) shall be taken in the presence of a witness.”.</p>
<p>16</p>	<p>Delete clause 16 and renumber accordingly.</p>



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	<p>police officer shall, without delay, make arrangements for a qualified person to examine the complainant.</p> <p>(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.</p> <p>(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.</p> <p>(4) A qualified person who proposes to take a sample from a complainant shall –</p> <p>(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;</p> <p>(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</p> <p>(c) inform the complainant or his representative of his right to withdraw his consent before the sample is taken.</p> <p>(5) Where the complainant or his representative has consented to the</p>

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	<p>Form 3 Second Schedule</p> <p>taking of a sample, he may withdraw his consent in the form set out as Form 3 in the Second Schedule.”</p>
<p>20 (renumbered as 19)</p>	<p>In subparagraph (b) insert after the second place in which the word “taken” appears, the words “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”.</p>
<p>21</p>	<p>Delete clause 21 and renumber accordingly.</p>
<p>23 (renumbered as 21)</p>	<p>In the renumbered clause 21:</p> <p>A. Insert the words “(1)” after the words “21.”.</p> <p>B. Insert after the proposed subclause (1) the following subclause:  “(2) Subsection (1) shall not apply where a sample is to be taken from a complainant.”</p>
<p>24 (renumbered as 22) and the heading immediately before</p> <p>Dealing with a DNA sample</p>	<p>Delete the heading immediately before clause 22 and clause 22, and substitute the following:</p> <p style="text-align: center;">“PART V PROCEDURE FOR TAKING NON-INTIMATE AND INTIMATE SAMPLES AND POST COLLECTION PROCEDURES</p> <p>22. A police officer or qualified person who takes a sample from a person under this Act shall –</p> <p>(a) place the sample in a container;</p> <p>(b) seal and label the container with an identifying mark;</p> <p>(c) place the container in a package;</p> <p>(d) seal the package; and</p> <p>(e) label the package with the same identifying</p>

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	<p>mark that is shown on the label affixed to the container.</p> <p>Storage and delivery of package</p> <p>23.(1) A police officer or qualified person who takes a sample from a person under this Act shall –</p> <p>(a) as soon as practicable, submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis;</p> <p>(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</p> <p>(c) complete the form set out as Form 4 in the Second Schedule.</p> <p>Form 4 Second Schedule</p> <p>(2) A person who receives the package containing the sample at the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis shall –</p> <p>(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</p> <p>(b) record the following information in – the DNA Register to be established and maintained at the Trinidad and Tobago Forensic Science Centre:</p> <p>(i) in the case of a police officer, the</p>

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	<p>name, rank and service number;</p> <p>(ii) in the case of a qualified person, the name, profession and place of employment;</p> <p>(iii) the identifying mark which is affixed to the package;</p> <p>(iv) the date and time the package was delivered to the Trinidad and Tobago Forensic Science Centre; and</p> <p>(v) the name and designation of the person receiving the package.</p>
<p>Duties of Forensic DNA analyst</p>	<p>24.(1) Subject to subsection (2), a Forensic DNA analyst who conducts a forensic DNA analysis shall prepare and submit a certificate of analysis to the Commissioner of Police.</p> <p>(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.</p> <p>(3) A Forensic DNA analyst shall submit a DNA profile obtained by him through</p>

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	<p>forensic DNA analysis to the Custodian for storing in the Forensic DNA Databank.</p> <p>(4) A Forensic DNA analyst shall be deemed to be a Government expert for the purposes of the Evidence Act.”</p> <p>Chap. 7:02</p>
<p>25</p>	<p>Delete clause 25 and substitute the following clause:</p> <p>“Retention of sample</p> <p>Act No. 10 of 2011</p> <p>Act No. 20 of 2011</p> <p>25.(1) Except in the case of:</p> <p>(a) offences referred to in the First Schedule to the Anti-Gang Act, 2011;</p> <p>(b) offences referred to in Schedule 6 to the Administration of Justice (Indictable Proceedings) Act, 2011; or</p> <p>(c) persons referred to in the Third Schedule,</p> <p>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.</p> <p>(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.</p> <p>(3) A sample taken from a person under subsection 1(c) shall be retained until ten years after retirement.</p> <p>(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 -</p> <p>(a) a list of samples and DNA profiles which have been entered in the DNA Register and Forensic DNA Databank, respectively; and</p> <p>(b) a list of the samples and DNA</p>

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	<p>profiles which are proposed to be destroyed and expunged, respectively.”.</p> <p>(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 Centre may destroy the samples and expunge the DNA profiles.</p>
<p>New Clause 26</p>	<p>Insert the following new clause after clause 25 and renumber accordingly:</p> <p>“ Expungement of profile in certain circumstances</p> <p>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.</p> <p>(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.</p> <p>(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</p>

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	<p>Forensic DNA Databank that the DNA profile may be expunged.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

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	<p>the Forensic DNA Databank that the DNA profile may be expunged.</p> <p>(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 –</p> <p>(a) take the necessary steps to have the DNA profile expunged from the Forensic DNA Databank; and</p> <p>(b) notify the Commissioner of Police, in writing, that the complainant’s DNA profile has been expunged.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

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	<p>Forensic DNA Databank, respectively, after the expiration of ten years from the date of exoneration.</p> <p>(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.”</p>
<p>27 (renumbered as 28)</p>	<p>Delete the renumbered clause 28 and renumber accordingly.</p>
<p>28</p>	<p>In subclause (1) insert the words “using reasonable force” after the word “person”.</p>
<p>29</p>	<p>A. In subclause 1 –</p> <ul style="list-style-type: none"> <li>(i) in paragraph (b), delete the words “ and the person from whom a request was made”; and</li> <li>(ii) in paragraph (d), delete the words “an analyst” and substitute the words “a Forensic DNA analyst”.</li> </ul> <p>B. In subclause (3) delete the number “4” and substitute the number “5”.</p>
<p>30</p>	<p>A. In subclause (1)(c) delete the word “DNA”.</p> <p>B. In subclause (2) delete the word” seven” and substitute the word “ten”</p>
<p>31</p>	<p>Insert after the first place in which the word “Act” appears the words “, other than a complainant,”.</p>
<p>34</p>	<p>In subclause (2) delete the word “negative” and substitute the word “affirmative”.</p>



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	<p>of ..... (Address)</p> <p>understand the above notice and I hereby—</p> <p>[Tick appropriate box]</p> <p>[ ] Volunteer to give a sample to be used in the investigation or prosecution of</p> <p>.....</p> <p>..... (Give details of alleged offences)</p> <p>[ ] Volunteer to give a sample. I am required to attend</p> <p>..... (Give address/location of the crime scene)</p> <p>in my capacity as a..... (Profession/vocation/public office)</p> <p>In order..... (Give details of purpose)</p> <p>Signed ..... Date .....</p> <p>Volunteer/Representative</p> <p>Signed..... Date..... ”</p> <p>Witness</p>
<p>Second Schedule</p>	<p>Delete Form 2 and substitute the following:</p> <p style="text-align: center;">“ FORM 2</p> <p style="text-align: right;">[section 14(3)]</p> <p style="text-align: center;">REPUBLIC OF TRINIDAD AND TOBAGO</p> <p style="text-align: center;">NOTICE: TAKING A REPEAT NON-INTIMATE SAMPLE</p> <p>Notice is hereby given, in accordance with section 14(3) of the Administration of Justice (Deoxyribonucleic Acid) Act, (“the Act”)</p> <p>that you ..... (Name)</p> <p>of..... (Address)</p> <p>are required to: (tick as appropriate)</p>

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	<p>( ) attend the.....Police Station</p> <p>( ) 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.</p> <p>The previous sample taken from you was: (tick as appropriate)</p> <p>( ) unsuitable/insufficient for the purpose of obtaining your DNA profile</p> <p>( ) lost</p> <p>( ) destroyed</p> <p>( ) not useable because</p> <p>.....</p> <p>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.</p> <p>.....</p> <p><i>Name, Rank and Service Number of Police Officer      Date of Service</i></p> <p>.....”</p> <p><i>Signature of the above-named</i></p>
<p>Second Schedule</p>	<p>A. Delete Form 3 and substitute the following:</p> <p style="text-align: center;">“ FORM 3</p> <p style="text-align: right;">[section 18]</p> <p>REPUBLIC OF TRINIDAD AND TOBAGO</p> <p style="text-align: center;">CONSENT FOR TAKING A SAMPLE FROM A COMPLAINANT</p> <p>Please Note that—</p> <p>1. Under section 4 of the Administration of Justice (Deoxyribonucleic Acid) Act—</p> <p>“intimate sample” means a specimen of biological or other material taken from —</p> <p style="margin-left: 40px;">(a) any part of a person’s genitals; or</p> <p style="margin-left: 40px;">(b) a person’s bodily orifice other than the mouth</p>



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	<p>.....</p> <p>.....</p> <p>(Name in block letters and signature of qualified person requesting consent)</p> <p>at.....</p> <p>(Place where consent is given)</p> <p>Witnessed by.....</p> <p>Signature of Witness.....</p> <p>Date.....</p> <hr/> <p><b>B. Withdrawal of Consent</b></p> <p>I.....of</p> <p>(Name of person/representative withdrawing consent)</p> <p>.....</p> <p>(Address)</p> <p>further to giving my consent pursuant to section 18(4) of the Act for a sample to be taken from.....hereby withdraw my consent.</p> <p>The reasons for withdrawing my consent are as follows:</p> <p>.....</p> <p>.....</p> <p>Signed:</p> <p>.....</p> <p>(Signature of person/representative withdrawing consent)</p> <p>.....</p> <p>(Place where consent is withdrawn)</p> <p>In the presence of:</p> <p>.....</p> <p>.....</p> <p>(Name in block letters and signature of qualified person requesting consent)</p>

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	<p>at.....  <i>(Place where consent was withdrawn)</i></p> <p>Witnessed by.....</p> <p>Signature of Witness.....</p> <p>Date..... ”</p> <p>B. Insert a new Form 4 as follows and renumber accordingly:</p> <p style="text-align: center;">“ FORM 4</p> <p style="text-align: right;">[section 23]</p> <p>REPUBLIC OF TRINIDAD AND TOBAGO</p> <p style="text-align: center;">RECORD OF TAKING OF SAMPLE BY A POLICE OFFICER / QUALIFIED PERSON</p> <p>INFORMATION OF PERSON FROM WHOM SAMPLE IS TAKEN:</p> <p>Name: .....</p> <p>Address: .....</p> <p>Date of birth:.....</p> <p>Gender of the person: .....</p> <p>Type of sample: Non-intimate/Intimate <i>[tick as appropriate]</i></p> <p>Date taken: .....</p> <p style="text-align: center;">_____</p> <p>INFORMATION TO BE COMPLETED BY PERSON TAKING SAMPLE:</p> <p>Time and place of taking of the sample: .....</p> <p>I certify that both the container and the package holding the sample are labelled and sealed:</p> <p>.....</p>

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	<p>The information on the label affixed to the container and the label affixed to the package:</p> <p>.....</p> <p>.....</p> <p>The nature of the sample: .....</p> <p><i>[Tick appropriate box]</i></p> <p><input type="checkbox"/> Name, Rank and Service Number of the police officer taking the sample:</p> <p>.....</p> <p><input type="checkbox"/> Name, Profession and Place of Employment of the qualified person taking the sample:</p> <p>.....”</p>
<p>Third Schedule</p> <p>Chap. 26:30</p> <p>Chap. 25:04</p> <p>Chap. 15:03</p> <p>Chap. 15:02</p> <p>Chap. 14:01</p> <p>Chap. 78:01</p>	<p>A. Delete item 1 and substitute the following:</p> <p>“ 1. A person who is employed, or applies for employment as:</p> <p>(a) an officer of the Protective Services;</p> <p>(b) a member of the Municipal Police Service;</p> <p>(c) a member of the Special Reserve Police;</p> <p>(d) a constable within the meaning of the Supplemental Police Act;</p> <p>(e) a member of the Defence Force;</p> <p>(f) a Customs Officer of the Customs and Excise Division; or</p> <p>(g) a private security officer.”.</p> <p>B. Delete item 2 and renumber accordingly.</p>