

NATIONAL FORENSIC DNA DATABASES

COUNCIL FOR RESPONSIBLE GENETICS

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National DNA Databases 2011

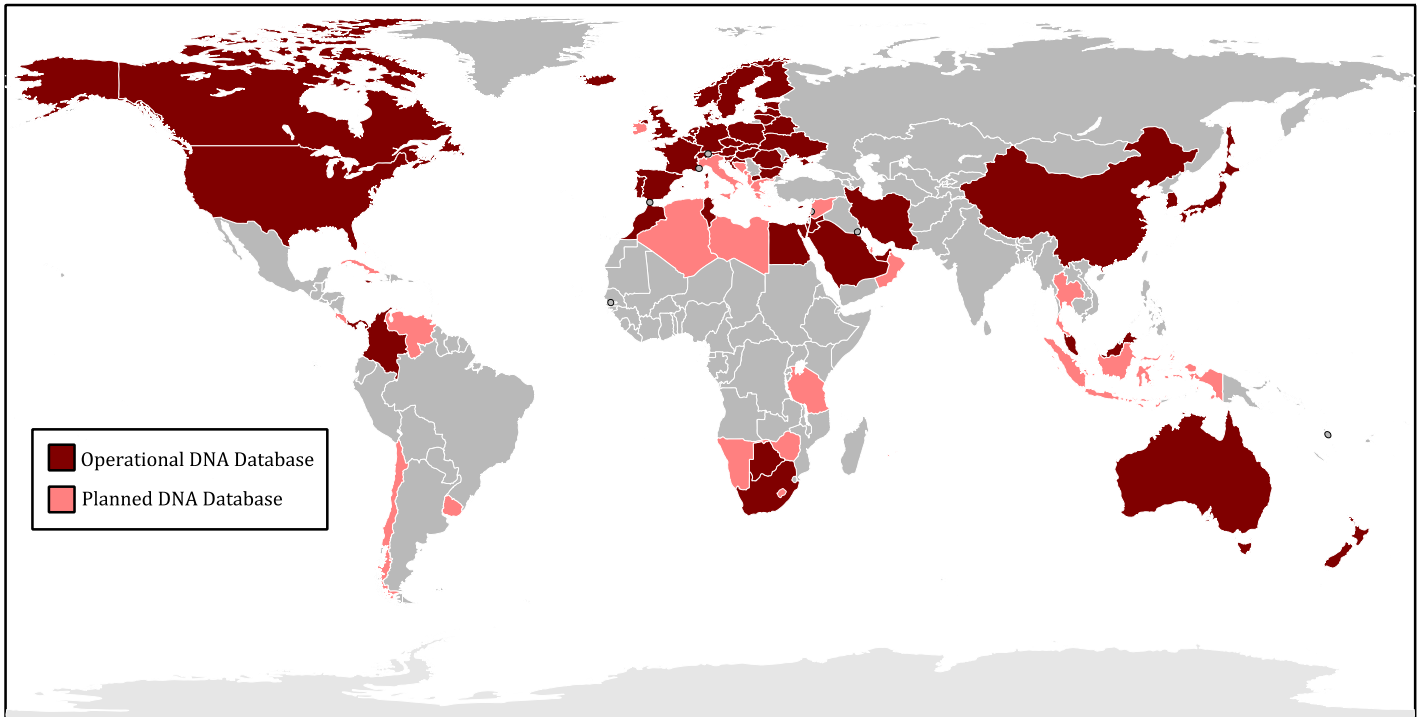


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Executive Summary

Summary Table

| Country | Entry Criteria | Removal Criteria | Sample Retention |
|------------------|--|--|---|
| Australia | | | |
| Austria | Convicted persons, suspects charged of a serious offences and all crime scene stains | Profiles of convicted persons are retained indefinitely, suspects' profiles are removed upon acquittal, [but only after submitting a written request], and crime scene stains are kept until a case is solved. | Convicted persons' samples must be destroyed when individual reaches age eighty, suspects samples are retained despite suspects' acquittal, [a written request for destruction must be submitted] |
| Bahrain | All residents of Bahrain | Unknown | Unknown |
| Belarus | | | |
| Belgium | Persons convicted of a "serious offence" and crime scene stains when ordered by a prosecutor | Convicted persons' profiles are kept for 10 years after their death and crime scene stains are removed when no longer considered useful (order of public prosecution office is necessary) | Convicted persons' samples must be destroyed once DNA profile is created, suspects' profiles must be destroyed once the prosecutor has determined that a suspects' request for independent DNA analysis will not be granted or when the result of such request has been communicated to the suspect |
| Botswana | Unknown | Unknown | Unknown |
| Bulgaria | Persons indicted for a premeditated indictable crime. | As to personal data registered for purposes of national security or crime prevention, it must be erased if there is no more reason for maintaining them under the Act or pursuant to an act. In determining whether to delete said personal data including DNA profiles, the Ministry of the Interior must consider the age of the individual, need of the information completion of an ongoing investigation or legal process, whether the individual has been convicted, amnesty status, implications of rehabilitation, or the expiration of a term provided by law. As to personal data registered for crime prevention purposes only, it must be deleted upon written order of the Data Commissioner or upon a written request of the individual in question if it was registered unlawfully, the underlying criminal proceedings have been terminated, the individual in | |

National Forensic DNA Databases

| Country | Entry Criteria | Removal Criteria | Sample Retention |
|--------------------------|---|--|---|
| | | question is acquitted of all charges, the individual in question is exempt by reason of incapacity, the individual is deceased. | |
| Canada | | | |
| China (Hong Kong) | Persons convicted of any “serious arrestable offense,” and all crime scene stains. | Convicted persons’ profiles are kept indefinitely unless their conviction is subsequently quashed on appeal, in which case they are removed from the database. | Convicted persons’ samples must be destroyed as soon as is practicable from such time as there is no other charge against the person in relation to an offence which renders the retention of the sample necessary and all proceedings (including any appeal) arising out of the conviction have been concluded; suspects samples’ must be destroyed as soon as is practicable twelve months after the sample is taken if they are not charged with any offence, or if so charged when all charges are withdrawn, the person is discharged by a court before conviction of the offence or all the offences, or they are acquitted of all charges. |
| Colombia | | | |
| Croatia | Any person whose identity is in question in the course of a criminal investigation and all crime scene stains. | Convicted persons’ profiles are kept for twenty years after the completion of the underlying criminal proceeding. | |
| Cyprus | All convicted persons, suspects, and crime scene stains | Convicted persons’ profiles are removed when their record is cleared, suspects’ profiles are removed when they are acquitted or otherwise cleared of all charges, and crime scene stains are kept until they are identified | All samples follow fate of DNA profile |
| Czech Republic | All convicted persons and crime scene stains | Convicted persons’ profiles are kept for eighty years after they are entered and crime scene stains are kept until they are identified | All samples follow fate of DNA profile |
| Denmark | Convicted persons, suspects charged of a offence that could lead to a prison sentence of 1½ years or more, and all crime scene stains | Convicted persons’ and suspects’ profiles are kept until two years after their death or upon their reaching age eighty and crime scene stains are retained for the “prescribed term” of the case as determined by the Danish Penalty Act | All samples follow fate of DNA profile |
| Egypt | Unknown | Unknown | Unknown |

National Forensic DNA Databases

| Country | Entry Criteria | Removal Criteria | Sample Retention |
|----------------------|---|--|---|
| Estonia | Persons convicted of or arrested for any recordable offence and all Crime Scene Stains | Convicted persons' and suspect's profiles are kept for ten years after their death and crime scene stains are kept for seventy-five years after they are entered | All samples are retained indefinitely |
| Finland | Convicted persons serving a prison sentence of 3 years or more, suspects charged of a crime that could lead to a prison sentence of 6 months or more, and all crime scene stains | Convicted persons' profiles are kept for ten years after the death of the convicted person, suspects' profiles are deleted within one year of a prosecutorial determination that there is no evidence of an offence, charges have been dismissed, when their sentence has been nullified, or ten years after the suspects death if not removed earlier; crime scene stains are kept indefinitely | Convicted persons' samples must be destroyed ten years after their death, suspects' samples must be destroyed within one year of a prosecutorial determination that there is no evidence of an offence, charges have been dismissed, when their sentence has been nullified, or ten years after the suspects death if not removed earlier |
| France | Persons convicted of or charged with a serious offence (list in law) and crime scene stains when deemed relevant | Convicted persons' profiles are kept for forty years after conviction upon their eightieth birthday, suspects' profiles are removed by motion of the prosecutor or the individual upon grounds that their storage no longer serves its original purpose, and crime scene stains are deleted forty years after they have been analyzed | Convicted persons' samples are retained for forty years after their conviction or until their eightieth birthday; suspects' samples are kept until conviction or acquittal: i.e. procedurally, DNA samples are treated as regular evidence |
| FYR Macedonia | Unknown | Unknown | Unknown |
| Germany | Persons convicted of a serious offence or repeatedly committing the same minor offence, suspects charged of a serious offence, and crime scene stains when related to any recordable offence | Convicted persons' and suspects profiles are removed when their retention is no longer necessary and crime scene stains must be deleted after 30 years of their entry | Convicted persons' and suspects' samples must be destroyed when they are no longer considered useful for investigatory purposes |
| Hungary | Persons convicted of one of the crime categories which are listed in law, suspects charged with an offence that could lead to a prison sentence of 5 years or more or that is listed in law, and all crime scene stains | Convicted persons' profiles are kept until twenty years after conviction, suspects' profiles are retained until the underlying proceeding is abandoned or the individual is acquitted, and crime scene stains are deleted at the time proscribed by law | Convicted persons samples must be destroyed twenty years after their conviction and suspects' samples must be destroyed upon their acquittal or abandonment of the underlying investigation or proceeding |
| Iceland | | | |
| Iran | Unknown | Unknown | Unknown |
| Israel | | | |
| Jamaica | Unknown | Unknown | Unknown |
| Japan | | | |
| Jordan | Unknown | Unknown | Unknown |
| Korea (Rep.) | Unknown | Unknown | Unknown |

National Forensic DNA Databases

| Country of) | Entry Criteria | Removal Criteria | Sample Retention |
|---------------------|--|---|---|
| Kuwait | Unknown | Unknown | Unknown |
| Latvia | Convicted or suspected of any recordable offence and all crime scene stains | Convicted persons' and suspects' profiles are retained for seventy five years after their entry and crime scene samples are kept until they are identified | All samples are kept for seventy five years |
| Lithuania | All convicted persons, suspects, and crime scene stains | Convicted persons' and suspects profiles are retained for one hundred years after their entry or ten years after their death and crime scene stains are kept indefinitely | All samples must be destroyed once they have been analyzed and a DNA profile derived therefrom |
| Luxembourg | Persons convicted of an offence that is listed in law (order of solicitor or examining magistrate is required), persons suspected of any recordable offence (order of solicitor or examining magistrate is required) and crime scene stains only by order of the solicitor, the examining magistrate or a judicial police officer acting by order of one these magistrates | Convicted persons' profiles are kept for ten years after their death, suspects' profiles are deleted upon their acquittal or ten years after their death, and crime scene stains are retained for thirty years after their entry | Convicted persons' samples are destroyed ten years after their death; suspects' samples are destroyed upon acquittal, ten years after their death, or upon the expiration of the a term prescribed by law |
| Malaysia | | | |
| Morocco | Unknown | Unknown | Unknown |
| Netherlands | Persons convicted or suspected of any recordable offence and all crime scene stains | Convicted persons' profiles are kept for one hundred years after the individual's date of birth, suspects' profiles are removed upon their acquittal, and crime scene stains are removed when no longer considered useful | Convicted persons' samples are retained indefinitely; suspects samples must be destroyed upon their acquittal |
| New Zealand | | | |
| Norway | | | |
| Panama | | | |
| Poland | | | |
| Portugal | | | |
| Romania | | | |
| Saudi Arabia | Unknown | Unknown | Unknown |
| Singapore | | | |
| Slovakia | Persons condemned to punishment other than a fine, all suspects, if warranted by possible prison sentence, and all crime scene stains | Convicted persons' profiles are retained for ten years after conviction, suspects' profiles are removed upon their acquittal, and crime scene stains are kept until they are identified, when the underlying case is solved, or after fifteen or thirty years depending on the severity of the underlying | All samples must be destroyed "as soon as possible" [GET QT FROM LAW] |

National Forensic DNA Databases

| Country | Entry Criteria | Removal Criteria | Sample Retention |
|-----------------------------|---|--|---|
| | | offense | |
| Slovenia | | | |
| South Africa | | | |
| Spain | | | |
| Sweden | Persons serving a prison sentence of 4 years or more, suspects charged of an offence that could lead to a prison sentence of 4 years or more (approval of prosecutor is required), and all crime scene stains | Convicted persons' profiles are kept for twenty years after their entry for individuals sentenced to no more than six years, thirty years for individuals sentenced to more than six years, or at most twenty years after the individual's death; suspects' profiles are removed upon acquittal and crime scene stains are deleted after twelve, twenty, or eighty years depending on the severity of the underlying offense | Have to be destroyed twenty years after their creation for individuals sentenced to no more than six years, thirty years for individuals sentenced to more than six years, or at most twenty years after the individual's death; suspects' samples must be destroyed upon their acquittal |
| Switzerland | | | |
| Tunisia | Unknown | Unknown | Unknown |
| UK | Persons convicted of any recordable offence, arrested for any recordable offense, and all crime scene stains For Scotland: Persons convicted of any recordable offence, arrested for any recordable offense, and all crime scene stains | Convicted persons' and suspects' profiles are retained indefinitely and crime scene stains are kept until they have been identified For Scotland: Convicted persons' profiles are retained indefinitely, suspects' profiles are retained until the underlying proceeding is abandoned or the individual is acquitted, and crime scene stains are kept until they have been identified | All samples are retained indefinitely For Scotland: Convicted persons' samples are retained indefinitely, but suspects' samples must be destroyed upon their acquittal or when no criminal proceedings are initiated |
| Ukraine | | | |
| United Arab Emirates | Unknown | Unknown | Unknown |
| United States | 12 states have laws authorizing arrestee sampling. All 50 states require that convicted sex offenders provide a DNA sample; 46 states require that all convicted felons provide a DNA sample. Eleven states specify certain misdemeanors among those who must provide a sample. There are 28 states that include DNA from delinquent juveniles in the database. | 38 states contain statutes that detail expungement criteria and procedure. 33 require the offender to initiate the process. | The criteria for retention vary from immediate removal, if a sample is not used, to retention of a sample for at least 35 years, to permanent retention for certain specified offences. |

Laws on Point

| | |
|--------------------------|--|
| Australia | Commonwealth Crimes Act of 1914 (as amended up to July 2008) The Crimes (Forensic Procedures) Act of 2000 No 59 (NSW) The Criminal Law (Forensic Procedures) Act 2007 (SA) |
| Austria | State Police Law (SPG) |
| Bahrain | Law No. 45 of 2006 (“Identity Card Law”) Law No. 46 of 2006 |
| Belarus | Minister of Justice Order No. 471 of December 5, 2008 Ministry of Justice Resolution No. 20 of July 21, 2003 |
| Belgium | Law of 22 March 1999 Royal Decree of 4 February 2002. |
| Botswana | Unknown |
| Bulgaria | Instruction I-73/2000 Ordinance on Police Records Law for the Ministry of the Interior Criminal Procedure Code |
| Canada | DNA Identification Act of 1998 |
| China (Hong Kong) | The Dangerous Drugs, Independent Commission Against Corruption and Police Force Ordinance Independent Commission Against Corruption Ordinance Police Force Ordinance |
| Colombia | Code of Criminal Procedure Decision C-025, 2009 of the Colombian Constitutional Court |
| Croatia | Police Act Code of Criminal Procedure Rules on Police Conduct Law on Prisons |
| Cyprus | Police Law Protection of Personal Data Act. |
| Czech Republic | Criminal Procedure Act Law on Police Binding Instruction No. 88/2002 of the President of the Police |
| Denmark | Law Establishing a Central DNA Profile Register |
| Egypt | Unknown |
| Estonia | Government of the Republic Act Databases Act, Police Act Personal Data Protection Act Code of Criminal Procedure Decree of National Police Commissioner |
| Finland | Coercive Measures Act Police Act Police Personal Data File Act |
| France | Code of Criminal Procedure Law No. 98-468 of June 17, 1998 |

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|------------------------|---|
| | <p>Law No. 2001-1062 of November 15, 2001</p> <p>Law No. 2003-239 of March 18, 2003</p> <p>Decree No. 2000-413 of May 18, 2000</p> <p>Decree No. 2002-697 of April 30, 2002</p> <p>Decree No. 2004-470 of May 25, 2004</p> <p>Decree No. 2004-71 of May 25, 2004</p> <p>Decree No. 2009-785 of June 23, 2009.</p> <p>Deliberation No. 2008-113 of May 14, 2008</p> <p>Circular of the Ministry of Justice of 27 July 2004</p> |
| FYR Macedonia | Unknown |
| Germany | <p>Rules of Legal Procedure (Strafprozessordnung)</p> <p>Bundeskriminalamtgesetz (act for the Federal Criminal Investigation Office)</p> |
| Hungary | Act LXXXV of 1999 on the Criminal Records and Certificates on Criminal Record. |
| Iceland | <p>Law on Police DNA File</p> <p>Police DNA File Regulations</p> |
| Iran | Unknown |
| Israel | 2005 Amendment to the Criminal Procedure Law |
| Jamaica | Unknown |
| Japan | <p>DNA Handling and Recording Regulations</p> <p>Police Instructions on DNA</p> |
| Jordan | Unknown |
| Korea (Rep. of) | Unknown |
| Kuwait | Unknown |
| Latvia | Law on Establishing the National DNA Database |
| Lithuania | <p>Criminal Procedure Code of the Republic of Lithuania</p> <p>Lithuanian Police Activity Law.</p> <p>Instructions on DNA Database Management,</p> <p>Order of the General Commissar of the Lithuanian Police</p> |
| Luxembourg | Law No. 163 of August 25, 2006 on the Procedures for Identification by DNA Fingerprints in Criminal Cases |
| Malaysia | The Deoxyribonucleic Acid (DNA) Identification Act of 2009 |
| Morocco | Unknown |
| Netherlands | <p>Code of Criminal Procedure</p> <p>DNA-investigation in Criminal Proceedings Act</p> |
| New Zealand | |
| Norway | <p>Criminal Procedures Act</p> <p>Law Regulating the Prosecuting Authority</p> |
| Panama | Law No. 80 of 23 November 1998 |
| Poland | <p>Code of Criminal Procedure</p> <p>Police Act</p> |
| Portugal | Law No. 5 of February 12, 2008 |
| Romania | Law No 76/2008 establishes the National System of Judicial Genetic Data |

National Forensic DNA Databases

| | |
|-----------------------------|---|
| | (hereinafter “SNDGJ”). |
| Saudi Arabia | Unknown |
| Singapore | Criminal Law (Temporary Provisions) Act Registration of Criminals Act |
| Slovakia | The Act n. 417/2002 -Use of DNA analysis for identification of persons |
| Slovenia | Police Act Code of Criminal Procedure |
| South Africa | Criminal Procedure Act |
| Spain | Criminal Procedure Law Law 15/1999 on Protection of Personal Data |
| Sweden | Code of Judicial Procedure Police Data Act |
| Switzerland | DNA-Profil-Gesetz DNA-Profil-Verordnung DNA-Analyselabor-Verordnung |
| Tunisia | Unknown |
| UK | Police and Criminal Evidence Act (PACE) Criminal Justice and Public Order Act (CJPOA) Criminal Evidence (Amendment) Act Criminal Justice and Police Act (CJPA) Criminal Justice Act (CJA) 2003 Data Protection Act (DPA) Human Rights Act (HRA) |
| Ukraine | Approved Regulations on the Operation of the Ministry of Internal Affairs Criminal Records Services |
| United Arab Emirates | Unknown |
| United States | The DNA Identification Act, 1994 Justice for All Act, 2004 Violence Against Women Act, 2005 |

Entry Criteria

| Country | Limited | | Unlimited | |
|-------------------|----------|----------|-----------|----------|
| | Suspects | Convicts | Suspects | Convicts |
| Australia | | X | X | |
| Austria | X | | | X |
| Bahrain | | | X | X |
| Belarus | | | | |
| Belgium | | X | | |
| Botswana | | | | |
| Bulgaria | X | X | | |
| Canada | | X | | |
| China (Hong Kong) | X | X | | |
| Colombia | | | X | X |
| Croatia | | | X | X |
| Cyprus | | | X | X |
| Czech Republic | X | | | X |
| Denmark | X | | | X |
| Egypt | | | | |
| Estonia | | | X | X |
| Finland | X | X | | |
| France | X | X | | |
| FYR Macedonia | | | | |
| Germany | X | X | | |
| Hungary | X | X | | |
| Iceland | | | | |
| Iran | | | | |
| Israel | | | | |
| Jamaica | | | | |
| Japan | | | | |
| Jordan | | | | |
| Korea (Rep. of) | | | | |
| Kuwait | | | | |
| Latvia | | | X | X |
| Lithuania | | | X | X |
| Luxembourg | | X | X | |
| Malaysia | | | X | X |
| Morocco | | | | |
| Netherlands | X | X | | |
| New Zealand | | | | |
| Norway | | | | |
| Panama | | | X | X |
| Poland | X | X | | |
| Portugal | | | X | X |

National Forensic DNA Databases

| | | | | |
|-----------------------------|----------|----------|----------|----------|
| Romania | X | X | | |
| Saudi Arabia | | | | |
| Singapore | | X | X | |
| Slovakia | | | X | X |
| Slovenia | | | X | X |
| South Africa | | | X | |
| Spain | | | | |
| Sweden | X | X | | |
| Switzerland | | | X | X |
| Tunisia | | | | |
| UK | | | X | X |
| Ukraine | | | | |
| United Arab Emirates | | | X | X |
| United States | X | X | | |

Introduction & Trends

The use of forensic DNA databases by law enforcement agencies around the globe is expanding unchecked at an alarming rate and efforts are underway to harmonize them. Resources must be mobilized to establish strong standards and universal safeguards for this most invasive form of surveillance and profiling.

The Problem:

A crime prevention tool that was originally intended only to identify the most dangerous convicted felons on a case by case basis, DNA collection and analysis is now routinely being used for a multiplicity of purposes that pose significant privacy and civil rights concerns to every citizen. DNA is far different from other methods of identification such as fingerprints. It is a window into an individual's medical history and that of their entire family. From the permanent retention of DNA samples of individuals never convicted of a crime, to DNA "dragnets" devoid of individualized suspicion and weak safeguards for the information once it is collected, the issues raised by the expanding use of DNA databanks pose a very serious threat to democracy.

Today, 56 countries worldwide operate national DNA databases from Asia to Europe and the Americas. Some are still in their infancy, while others such as those in the United States and the United Kingdom are large, highly sophisticated and have been established for at least fifteen years. The growing number of DNA databases differ widely both in the categories of individuals included in the databases and in the allowed usages of the databases themselves. All such databases operate on a model that allows investigators to use the information on a grand scale for multiple ongoing investigations and all reflect the racial and other biases of the broader criminal justice systems of which they are a part. For example, while African-Americans are only 12% of the U.S. population, their profiles constitute 40% of the Federal database. In the United Kingdom, nearly three-quarters of young men of African descent are on the database, as are tens of thousands of juveniles.

In the United States, all 50 states and the Federal Bureau of Investigation maintain DNA databases. The FBI database, known as CODIS (Combined DNA Index System) not only includes the DNA profiles of felons convicted in Federal courts, but effective this year may

include profiles of people arrested for federal crimes as well as undocumented immigrants that have been detained and furthermore allows states to upload profiles of anyone convicted of a crime. It now contains a growing record of over 5 million profiles.

Today, forty-four

states collect DNA from anyone convicted of a felony, thirty-nine states collect DNA from those convicted of certain misdemeanors, twenty-eight collect DNA from juvenile offenders, six states collect DNA of all individuals arrested and some states (such as California) have started to retain DNA from individuals identified as “suspects.” Still other states such as Louisiana and New York have been discovered to have “offline” DNA databases including DNA samples and profiles taken from victims or suspects never charged with a crime. U.S. intelligence operates a separate database, the Joint Federal Agencies Intelligence DNA Database, for purposes of identifying and tracking alleged terrorist suspects and allows the military and other Federal agencies access to it.

The United Kingdom’s DNA database (NDNAD) is of similar size, containing 4.7 million records on the English and Welsh database representing over 5% of its population. The database, which grows by 30,000 samples each month, is populated by samples recovered from crime scenes and taken from police suspects and (in England and Wales) anyone arrested and detained at a police station for any recordable offense, permanently retaining both DNA profiles and samples.

DNA databases around the world vary widely on issues ranging from access and consent to retention of both DNA samples themselves as well as the computerized profiles created from them. Countries, including the UK and the United States have used their DNA databases to match samples taken in “DNA dragnets” of individuals without probable cause simply because of their proximity to a crime scene. These countries and others have used “familial searching” of databases for potential links between individuals whose DNA is already in the database with family members whose DNA is not. In the United States, a few cases have already been reported where dubious science has been used to conduct “racial analysis” of crime scene evidence.

A Growing International Threat:

The threats to privacy and democracy worldwide posed by the rapid growth of DNA databases are heightened by the growing effort to link all these databases into one international database. In a post 9-11 world, law enforcement and national leaders have become increasingly concerned with terrorism, illegal immigration and “global crime.”

1. United Kingdom: Through data-sharing agreements established through the European Union and other international institutions, DNA data is shared across borders with little oversight.
2. United States: The National Institute of Justice’s International Center promotes information sharing among similar Institutes worldwide.
3. INTERPOL: Interpol’s DNA database now contains profiles shared by 49 countries.

Advisory groups have been formed in Europe and elsewhere tasked with improving harmonization of forensic DNA methods to allow for the ease of sharing data across national boundaries. Such efforts highlight an already growing problem attendant to large DNA databases, the statistical increase in false matches which raises additional civil liberties concerns.

At the same time such multiple efforts are underway, no such international effort has been undertaken to create common standards for the content and use of DNA databases to ensure respect for privacy and individual rights. On December 4, 2008, the European Court of Human Rights ruled unanimously in the Marper case that the retention of the DNA of innocent persons by the UK violated human rights law. How the UK will react to the Court’s decision still remains unclear. What is clear, though, is that an international effort is vital to ensure that relaxed standards for such databases do not become the norm.

The Report:

The following report represents a first step to tackling this complex set of problems. Far from complete, it nevertheless aspires to factual comprehensiveness. To the extent possible, each country report touches on six key issues: (i) law on point, (ii) entry criteria, (iii) sample collection, (iv) removal criteria, (v) sample retention, and (vi) database access. Each of these topics points up a critical feature of the current international forensic DNA landscape. Each is also a potential site for abuse as well as for reform. The ultimate goal of this report is to provide the rigorous factual basis required for strategic, effective activism. While certain countries could have filled volumes of their own while others failed to yield even a page, it is the aspiration to breadth as well as depth that marks this project as unlike others. Rather than confine the scope to those parts of the world where biotechnology common, I have tried (though not always succeeded) to focus on the developing as much as the developed world—for it is here, where policy and practice are unfixed, that advocacy can have its greatest impact.

National Status Reports Part I - Operational DNA Databases

Australia

In Australia, legislation operates on a commonwealth level across all states as well as on a state to state basis. On the commonwealth level, the Commonwealth Crimes Act of 1914 (as amended up to July 2008) regulates the taking, use and destruction of fingerprints and DNA samples.

With regard to DNA samples –

- Part ID of the Act deals in detail with forensic procedures and provides for forensic procedures to be carried out on suspects in relation to indictable offences, offenders in relation to prescribed and serious offences and volunteers.
- An intimate or non-intimate DNA sample can be collected from a suspect with his or her consent. If consent is not given then a non-intimate sample can be collected from a suspect in custody, by order of a senior constable. An intimate sample can only be collected without the suspect's consent by order of a magistrate.
- The Act makes provision for the taking of intimate and non-intimate samples from offenders convicted of serious (and other stipulated) offences.
- The Act also provides for the taking of samples from volunteers and provides that if consent is withdrawn, by a volunteer, then the forensic procedure will not continue and the information obtained will be deleted. A magistrate can in exceptional circumstances order that forensic material obtained from a volunteer who has subsequently withdrawn his consent be retained for a specific period.
- Samples taken from suspects must be destroyed after a period of 12 months has elapsed since the material was taken, unless a magistrate extends the period, and proceedings have not been instituted against the suspect or the suspect has been acquitted of the relevant offence.
- Any forensic material obtained from a convicted offender must be destroyed, if such offender's conviction is quashed.

Three states in Australia have adopted legislation to make provision for the retention of forensic samples (DNA and fingerprints), where a person is not convicted of an offence: South Australia, Western Australia and the Northern Territory. CrimTrac's DNA National Criminal Investigation DNA database (NCIDD) allows the nine Australian jurisdictions to match DNA profiles. It

operates in accordance with relevant Commonwealth, State and Territory legislation governing the collection and matching of DNA profiles. DNA profiles will be removed from the database in accordance with destruction dates notified by the jurisdictions.

New South Wales (NSW)

The Crimes (Forensic Procedures) Act of 2000 No 59 came into operation in 2001 and regulates DNA sample collection, usage and destruction in NSW. The custodian of the database is CrimeTrac in Canberra.

Sample collection and entry criteria:

Forensic procedures may be performed on:

- a. Suspects: before authorising a non-intimate procedure, the senior police officer must be satisfied that:
 - (i) The suspect is under arrest;
 - (ii) The suspect is not a child or incapable person;
 - (iii) There are reasonable grounds to believe that the suspect has committed an offence;
 - (iv) There are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect has committed an offence;
 - (v) Carrying out of such a procedure is justified under the circumstances.
- b. All convicted serious indictable offenders serving sentences in New South Wales correctional centers, whether convicted before or after the legislation comes into force. A serious indictable offender is defined as a person convicted of an offence carrying a maximum penalty of five or more years of imprisonment.
- c. On a volunteer, other than a child or incapable person, with the volunteer's informed consent.
- d. Unknown deceased persons.
- e. Missing persons.

DNA samples may only be taken after obtaining a court order in the following circumstances:

- a. DNA samples taken from children or incapable persons;

- b. DNA samples taken from a suspect not under arrest who does not consent to a procedure;
and
- c. An intimate forensic procedure or buccal swab on a suspect under arrest who does not consent to such a procedure.

The criteria for a magistrate making a court order are similar to that for a senior police officer's order. The magistrate must be satisfied that the person is a suspect, there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed a relevant offence, and that the carrying out of the procedure is justified in all the circumstances.

Sample retention: The Act provides for the destruction of forensic material obtained from a person who is acquitted or whose conviction is quashed. It also ensures that forensic material taken from a suspect is to be destroyed if proceedings against the suspect have not commenced within 12 months of the material being taken, unless a court is satisfied that there are special reasons for extending the 12 month period or where there is an outstanding warrant against the suspect. By contrast, DNA profiles taken from volunteers for limited purposes may only be matched against the crime scene in respect of which the volunteer has freely provided his or her DNA.

Removal of entries:

- Twelve months from the day that the DNA profile was placed on the system.
- If the DNA profile is derived from forensic material taken from a volunteer, the DNA profile must be removed from the database after the period agreed by the volunteer and the Chief Commissioner of Police.
- The period will be determined by the Chief Commissioner of Police for unknown deceased persons.

The database does not contain the identities of persons who have supplied samples for DNA profiling. Identity fields are removed from records before they are transmitted to the national DNA database. Only State and Territory forensic laboratories supplying the DNA profiles will

know the identities of the profiles' providers. The Act sets out the forensic procedures that may be carried out on suspects. There are two types of procedures: (a) A non-intimate forensic procedure (such as the taking of finger or palm prints, a sample of non-pubic hair or the taking of a sample from under a nail); (b) An intimate forensic procedure (such as a blood sample or dental impression).

South Australia

The Criminal Law (Forensic Procedures) Act 2007, provides for the carrying out of forensic procedures to obtain evidence relevant to the investigation of criminal offences and makes provision for a DNA database system:

- The Act distinguishes between procedures to be followed depending on whether the person from whom a sample is to be taken is a volunteer, a suspect or a convicted offender.
- Volunteers and victims procedures: Only carried out with the consent of the person involved. If consent is withdrawn any evidence obtained from the procedures is inadmissible. Material can be retained, where consent is withdrawn, if a senior police official makes an order authorizing such retention based on the fact that the person is a suspect in a serious offence.
- Suspect procedures: May be carried out regardless of whether or not the suspect is in lawful custody, but is limited to the fact that the person is suspected to have committed a serious offence. Where consent is not given, reasonable force may be used to obtain the samples.
- Offender's procedures: The section applies regardless of whether a person was convicted before or after commencement of the Act.

Austrian Federal law regarding the organisation of the (internal) security management and the practice of the state police (state police law – SPG), BGBl No. 566/1991 as published in BGBl. I No. 151/2004.^{1,2}

Convicted persons, suspects charged of a serious offences and all crime scene stains³

DNA profiles of crime suspects can be entered when they are suspected of having committed an offence that is classified in law as a ‘serious offence’. There are no restrictions to the entry of

¹ Council of the European Union, Ad hoc Group on Information Exchange, DNA Databases to Assist with Criminal Investigations, at 5, E.U. Doc. No. 9445/1/06 (REV 1) (Jun. 16, 2006) (hereinafter “E.U. 9445/1/06”).

² Providing in relevant part:

§ 67. (1) the DNA of a person may be determined within the framework of an identity examination, if that person is suspected of having committed a dangerous attack committed and if due to this act or the personality of that person it can be expected, that he/she will leave traces while committing further dangerous attacks and these traces would make his/her recognition possible on the basis of the determined genetic information. An identity examination according to § 65 par. 2 may also be made in relation to the DNA of people, as far as this is necessary for the evaluation of existing DNA traces.

(1a) An identification examination in relation to missing persons (§ 65a) and to corpses (§ 66) may also include the determination of (their) DNA.

(2) Genetic information generated by an identification examination, may be evaluated exclusively for the purposes of the identification examination. The molecular-genetic investigation has to be made via a service provider, to whom the entire investigation material has to be transmitted, however no identification data of the person concerned shall be transmitted (to the service provider).

(3) The police authorities have to take contractual precautions ensuring that the service provider examines only those areas of the DNA, which aim at the recognition, and that the service provider destroys the investigation material, if the police authority is obliged to delete the identification data. § 75 SPG reads: Central recognise-official evidence.

§ 75. (1) The police authorities are authorized to process identity data collected in accordance with §§ 65 paragraph 1, 65a and 66 paragraph 1, existing identity data (§ 65 paragraph 6) and the reason why the data was collected in a central police records data base.

(2) The police authorities are authorized to use the data stored by them in a central police records data base. Transmissions of the data processed in accordance with paragraph 1 are permissible to authorities for purposes of the state police, of the criminal jurisdiction and in other fields of the security management, as far as this is necessary for purposes of recognition. In all other respects transmissions are permissible, if for this an express legal authorization exists.

³ See Nathan Van Camp & Kris Dierickx, GeneBanc, National Forensic DNA Databases: Socio-Ethical Challenges & Current Practices in the EU 33 (2007) (hereinafter “EU Current Practices”).

convicted offenders' DNA profiles and DNA profiles that are derived from unidentified crime scene stains.

Law enforcement officers have the authority to coercively collect a DNA sample from convicted offenders and from persons who are suspected of having committed a 'serious offence'. They are also allowed to collect a DNA sample from minors and mentally ill persons.

Profiles of convicted persons are retained indefinitely, suspects' profiles are removed upon acquittal, [but only after submitting a written request], and crime scene stains are kept until a case is solved.⁴

The DNA profiles that are derived from unidentified crime scene stains are stored in the database until the corresponding case is solved. Crime suspects' DNA profiles are removed from the database when the suspect is acquitted. As an additional requirement, the individual has to submit a written application to the BMI. The DNA profiles of convicted offenders are retained indefinitely.

Convicted persons' samples must be destroyed when individual reaches age eighty, suspects samples are retained despite suspects' acquittal, [a written request for destruction must be submitted]⁵

Crime suspects must apply for sample destruction upon their acquittal. Otherwise, their sample is retained. The DNA samples of convicted offenders have to be destroyed when the person concerned has reached the age of eighty years. DNA samples of minors must be destroyed 3 years after collection.

Ministry of the Interior (BMI), Federal Criminal Investigation Office, office 6.1.

The staff members of the forensic institutes of Innsbruck, Salzburg and Vienna only have access to the DNA profile values and a reference number. Judicial authorities have full access rights and can therefore also consult personal information. The legal basis for the international exchange of DNA profiles can be found in both the Police Cooperation Law and the Data Protection Law. DNA profiles are exchanged through Interpol but because Austria has signed and ratified the

⁴ See EU Current Practices at 31.

⁵ See EU Current Practices at 34.

National Forensic DNA Databases

Convention of Prüm, it also has automatic access to the forensic DNA databases of its contracting partners.

WEB users interfaces. Data base Microsoft SQL. Enquiry and Matchtool self development program ++ with C

Interrogation and Matchtool self development program ++ with C There are special search algorithms, automatic error control with reference values and special functions such as tools for mixed traces. In the case of hits automatic confirmation analysis requirement at the institutes concerned.

Law No. 45 of 2006⁶ (“Identity Card Law”)

Law No. 46 of 2006⁷

All residents of Bahrain

⁶ Law No. (45) for the year 2006 Amending some Provisions of Decree Law No. (9) for the year 1984 Regarding the Central Population Registry (enacted July 30, 2006).

⁷ Law No. (46) for the year 2006 on Identity Cards (enacted July 30, 2006).

I. Law on Point

Minister of Justice Order No. 471 of December 5, 2008⁸

Ministry of Justice Resolution No. 20 of July 21, 2003⁹

⁸ Министра юстиции, 05.12.2008 Приказ №471, Устав, «Центр Судебной Экспертизы И Криминалистики Министерства Юстиции Республики Беларусь» [Charter, “Center for forensic and Criminalistics of the Ministry of Justice of the Republic of Belarus”].

⁹ Министерства юстиции, 31 июля 2003г. Постановление № 20, Инструкция о порядке производства судебных экспертиз и специальных исследований в Научно-исследовательском учреждении Научно-исследовательский институт проблем криминологии [Instruction on the production of forensic analysis and special studies at the Research Establishment of the Scientific Research Institute for Criminology].

I. Law on Point

The Belgian National DNA database was established in 1999 pursuant to the Law of 22 March 1999 Concerning the Identification Procedure by DNA Analysis in Criminal Matters and is subject to the Royal Decree of 4 February 2002.¹⁰ The law of March 22, 1999 created two databases, each administered by the Nationaal Instituut voor Criminalistiek en Criminologie [National Institute for Criminalistics and Criminology] (hereinafter “NICC”).¹¹ The first of these databases, the “criminalistics” database, contains DNA profiles derived from crime scene stains.¹² Belgian law permits the creation of crime scene stain profiles at the express authorization of the prosecutor. The law also requires that, whenever practicable, forensic technicians gather sufficient trace biological evidence from crime scenes so that any future defendant can subject them to a counter-examination by his or her own expert witness.

The second database, or “convicts” database, contains profiles derived from DNA samples of persons convicted of a “serious offence,” at term defined elsewhere in the law.¹³ It is required that convicted persons be informed that their DNR profile has been included in the “convicts” database and, to the extent the law allows, that it will be compared against trace biological evidence in future investigations. Notably, there is no database containing DNA information on persons only suspected of crimes.

II. Entry Criteria

In criminal investigations, unidentified crime scene stains may be collected and submitted for analysis by order of the prosecutor. Belgian law requires the prosecutor to have a reasonable basis for this decision. When Belgian police recover human biological samples from a crime scene in the course of an investigation, they may request a DNA sample from any suspect over the age of eighteen. In such cases, the prosecutor has an affirmative right to inform the suspect of his rights, after which the suspect must voluntarily consent before the police may take a

¹⁰ E.U. 9445/1/06 at 5.

¹¹ Law of 22 March 1999, Art. 4, § 1, & Art. 5, § 1.

¹² Id. at Art. 4, §1.

¹³ Id. at Art. 5, §1.

sample of his DNA. In judicial investigations, however, the examining magistrate can compel a suspect to provide a DNA sample in cases where (1) the crime under investigation carries a penalty in excess of five years' incarceration, (2) human biological samples were recovered from the crime scene in question, and the magistrate has sufficient evidence that the suspect is directly linked to the crime.

III. Sample Collection

In either case, a senior police officer or a doctor must collect the genetic sample. In the case of a buccal swab, only a senior police officer is needed. A sample of blood, however, must be extracted by a doctor. In the event that a magistrate orders an unwilling individual to provide a genetic sample, the police may use all reasonable force to collect said sample by buccal swab. Belgian law prohibits compelling a defendant to submit to the extraction of a blood sample. After taking the sample, the senior police officer or doctor must record the following information for transmittal with the sample to the INCC for analysis: (1) the date and time when the sample was taken; (2) the relevant criminal file number; (3) the name of the prosecutor or magistrate who requested the sample; (4) the full name, date of birth, place of birth, nationality, and sex of the person in question; and (5) the circumstances in which the sample was taken.

IV. Removal Criteria

Convicted persons' profiles are kept for ten years after their death and crime scene stains are removed when no longer considered useful (an order of public prosecution office is necessary)¹⁴ The office of the public prosecutor can authorize the removal of profiles from the criminalistics database when their storage is no longer useful for future investigations.¹⁵ When the police are unable to identify profiles, they must be removed after thirty years. When the police are able to identify a profile, it must be removed when the underlying criminal proceedings are exhausted. Convicted persons' profiles are kept for ten years after their death.¹⁶

V. Sample Retention

¹⁴ See EU Current Practices at 36-37.

¹⁵ Id. at Art. 4, § 4.

¹⁶ Id. at Art. 5, § 5.

Convicted persons' samples must be destroyed once their DNA profile is derived.¹⁷ Suspects' samples must be destroyed once the prosecutor has determined that their request for independent DNA analysis will not be granted or when the result of such request has been communicated to the suspect.¹⁸

VI. Database Access

When a match is found between a DNA profile that is derived from a crime scene sample and a DNA profile from the database and a positive match is established, the law permits only the public prosecution office and the examining magistrate to be informed about the identity of the person in question.¹⁹ The only people who have access to the information on the database include the manager that is responsible for the database within the NICC, certain other members of the NICC, the public prosecutor and the examining magistrate. They have access to the record number of the criminal file, the name of the magistrate who ordered the establishment of the DNA profile and its file number, details of the laboratory that analyzed the DNA sample, the sex of the person and the code number allocated by the magistrate linking the DNA profile to the person concerned. To ensure that the legally protected privacy measures are being met, an expert of the NICC is entrusted with the task of the implementation and safekeeping of the regulations that are imposed by the Commission for the protection of the privacy.²⁰

The DNA data is managed using the CODIS system: SQL Server 2000 (network Windows 2000). The administrative data is managed on Access 97 but will be transferred on SQL Server in the current of this year. The algorithms used are those developed for CODIS (Autoseacher et Searcher). We consider only the perfect matches (high stringency) and the matches pure profile/complex profile (moderate stringency).

¹⁷ Id. at Art. 5, § 2.

¹⁸ Id. at Art. 2, § 5.

¹⁹ Id. at Art. 4, § 3.

²⁰ Id. at Art 7.

Botswana

In 1989 a forensic science laboratory was established in Gaborone. The laboratory started with five scientists. At the end of 2007 it had 32. In recent years, the Botswana Police Service has acquired state of the art equipment used in the analysis of forensic evidence such as DNA, drugs, alcohol, questioned documents and firearms. The organization is in the process of acquiring databases, which are intended to provide investigation leads in cases where suspects would be unknown, including the automated fingerprint identification system (AFIS) and combined DNA Index System (CODIS). For the 2007 fiscal year, the Botswana Parliament approved P2 million for the pre-construction formalities of an office block for the forensic science laboratory.²¹

In late 2007, the Sam Houston University College of Criminal Justice in the United States agreed to help the Botswana Police Service establish a national DNA database, an illicit drug detection system, and provide training in toxicology and crime scene reconstruction. A press release from the Botswana Police Service says Commissioner Thebeyame Tsimako recently visited the university to “operationalise” a memorandum of understanding signed between the two institutions in 2006. The memorandum of understanding provides for technical assistance in forensic science, law enforcement training, a graduate exchange program, and the sponsoring of Botswana police officers. According to the press release, the university has agreed to send the first team of its graduates next year, and that some police officers will go for training in the United States.²²

²¹ *Government Recognizes Importance of Forensic Science in Crime Investigating*, Botswana Press Agency, February 26, 2007.

²² *US College Helps Police Set Up DNA Data Base*, Botswana Press Agency, October 24, 2007.

Instruction I-73/2000²³

Ordinance on Police Records²⁴

Law for the Ministry of the Interior²⁵

Criminal Procedure Code²⁶

Persons indicted for a premeditated indictable crime.²⁷

As to personal data registered for purposes of national security or crime prevention, it must be erased if there is no more reason for maintaining them under the Act or pursuant to an act.²⁸ In determining whether to delete said personal data including DNA profiles, the Ministry of the Interior must consider the age of the individual, need of the information completion of an ongoing investigation or legal process, whether the individual has been convicted, amnesty

²³ See Георги БАНКОВ, ДНК кар-то-те-ка-та на Бъл-га-рия [DNA-File of Bulgaria], 155 ОБЕКТИВ 21, 21 (May 2008); see also George Banikov, *Bulgaria's DNA Database*, 158 ОБЕКТИВ 9-1, 9-1 (Oct. 2008) (Quarterly English-Language Digest Issue) ("Instruction I-73/2000 is indicated as the act regulating [Bulgaria's DNA database]. The instruction is not a public document and its content remains unclear for the time being.").

²⁴ Ordinance No. Iz-1187 of June 26, 2007 (promulgated pursuant to the Law for the Ministry of the Interior, Art. 21, § 11; repealing Ordinance No. I-221 of Oct. 13, 2003) (hereinafter "Ordinance No. Iz-1187") regulates, *inter alia*, Bulgaria's National DNA database ("Национална ДНК база данни"). The Ministry of the Interior's Research Institute of Forensic Science and Criminology maintains the database. *Id.* at Arts. 24, 25 § 2(c). Article 3 provides "that persons indicted for a premeditated indictable crime are also subject to registration." Banikov, *Bulgaria's DNA Database*, 158 ОБЕКТИВ at 9-1.

²⁵ ЗАКОН ЗА МИНИСТЕРСТВОТО НА ВЪТРЕШНИТЕ РАБОТИ [Law for the Ministry of the Interior], Обн. ДВ. бр.17 от 24 Февруари 2006г. [Promulgated in the State Gazette, issue 17 of 24 February 2006], as amended (Bulg. 2006) (hereinafter "Bulgarian Law for the Ministry of the Interior"), Art. 21, § 11; Art. 59; Art. 62, Art. 135, § 4; Art. 159; Art. 160.

²⁶ НАКАЗАТЕЛНО-ПРОЦЕСУАЛЕН КОДЕКС [Criminal Procedure Code], Обн. ДВ. бр.86 от 28 Октомври 2005г. [Promulgated in the State Gazette, issue 86 of Oct. 2005], as amended (Bulg.) (hereinafter "Bulgarian CCP"), Art. 144, 144(2)(3); Art. 146. Art. 144, entitled Cases in which expertise is appointed, provides in relevant part: (1) Where to clarify some facts of the case requires special knowledge through science, art or technology, the court or authority shall appoint an expert. (2) An expert is required when there is doubt as to: . . . 3. responsibility of the accused. *Id.* Art. 146, entitled Taking Samples for Comparative Studies, provides in relevant part: (1) Appointed experts may require the defendant to provide a biological sample for the purposes of a comparative study, if it is not possible to otherwise obtain the same. . . . (3) Persons referred to in para. 1 . . . are required to provide the required samples for comparative study, and if not, they may be forcibly seized with the permission of the court of first instance. (4) When the model for comparative research related to blood sample or other similar interventions to penetrate the human body, sampling is done by a person with medical qualifications under the supervision of a physician under the rules of medical practice and without endangering health of the person. *Id.*

²⁷ See Law for the Ministry of the Interior, at Art. 59(3)(3); Ordinance No. Iz-1187, at Art. 3.

²⁸ Law for the Ministry of the Interior, Art. 159 § (5) ("Личните данни . . . се заличават, ако вече не съществува причина за тяхното запазване съгласно закона или в изпълнение на съдебен акт.").

status, implications of rehabilitation, or the expiration of a term provided by law.²⁹ As to personal data registered for crime prevention purposes only, it must be deleted upon written order of the Data Commissioner or upon a written request of the individual in question if it was registered unlawfully, the underlying criminal proceedings have been terminated, the individual in question is acquitted of all charges, the individual in question is exempt by reason of incapacity, the individual is deceased.³⁰

²⁹ Law for the Ministry of the Interior, Art. 159 § (6) (“При заличаването на личните данни се вземат предвид възрастта на физическото лице, естеството на обработваните лични данни, необходимостта от обработване до приключването на конкретното разследване или законова процедура, влизане в сила на присъда или съдебно решение, амнистия, реабилитация или изтичане срока на давност.”)

³⁰ Law for the Ministry of the Interior, Art. 160, §§ 2(1) to (5).

The DNA Identification Act, 1998 provides for the establishment of a DNA databank and amended the Criminal Code of Canada to provide a mechanism for a judge to order persons convicted of designated offences to provide blood, buccal or hair samples from which DNA profiles could be derived. The DNA Identification Act includes strict guidelines on genetic privacy and stipulates that samples collected from convicted offenders can only be used for law enforcement purposes. The Canadian DNA database is therefore restricted in its application to convicted offenders and is limited to those convicted of designated offences as defined in the Criminal Code. The DNA data bank of Canada manages two principal indices, namely: a) The Convicted Offender Index; and b) the Crime Scene Index containing DNA profiles obtained from crime scenes.

The National DNA Data Bank conforms with the requirements of ISO/IEC 17025 and is recognized as an accredited testing laboratory for specific tests listed in the scope of accreditation approved by the Standards Council of Canada.

Section 9(1) of the DNA Identification Act, provides that information in the convicted offenders index is to be kept indefinitely. Section 9(2) however provides for the removal of information from the convicted offenders index if the person's conviction is set aside or if the person is subsequently acquitted of the offence. If a person's profile was entered into the convicted offenders' index and that person is subsequently granted a pardon then the Act stipulates that his or her profile may not be used for forensic DNA analysis (section 9(8) of the Act). With regard to children, the Act provides that information may be kept on the convicted offenders' register, but must be removed when the record relating to the same offence is required to be destroyed, sealed or transmitted to the National Archivist of Canada under Part 6 of the Youth Criminal Justice Act. Samples may only be used for forensic DNA analysis and may only be used for comparing offender profiles with crime scene profiles.

The Act provides for the retroactive collection of profiles. In *R v Rodgers* (2006), the Supreme Court of Canada upheld the legality of the DNA database, including the retroactive collection of profiles. The Court held that “DNA sampling is no more part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence than the taking of a photograph or fingerprints. The fact that the DNA order may have a deterrent effect on the offender does not make it a punishment”.

China (Hong Kong)

I. Law on Point

The Dangerous Drugs, Independent Commission Against Corruption and Police Force Ordinance,³¹ as amending the Independent Commission Against Corruption Ordinance³² and the Police Force Ordinance.³³

II. Entry Criteria

Persons convicted of any “serious arrestable offense,”³⁴ and all crime scene stains.³⁵

³¹ Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance, No. 68 of 2000, §§ 4 to 7 (H.K.).

³² Independent Commission Against Corruption Ordinance, (2003) Cap. 204, §§ 10 to 10G (H.K.).

³³ Police Force Ordinance, (2005) Cap. 232, §§ 59 to 59H (H.K.).

³⁴ Police Force Ordinance, (2005) Cap. 232, 59G, §§ (1)(a) to (d) (H.K.), which provides in relevant part:

(1) There shall be maintained (whether in computerized form or otherwise), by the Government Chemist on behalf of the Commissioner, a DNA database storing DNA information derived from an intimate sample or a non-intimate sample taken from a person pursuant to (a) section 59A [intimate samples obtained from persons suspected of a serious arrestable offence] or 59C [non-intimate samples obtained from persons suspected of a serious arrestable offence] if the person has been subsequently convicted of any serious arrestable offence; (b) section 10E of the Independent Commission Against Corruption Ordinance (Cap 204) [non-intimate samples procured from persons suspected of an offence specified in the Independent Commission Against Corruption Ordinance, (2003) Cap. 204, 10, §§ 5(a) to (g)] if the person has been subsequently convicted of any serious arrestable offence; (c) section 59E [non-intimate sample obtained from person convicted of a serious arrested offence no sample from whom has otherwise been obtained]; or (d) section 59F [non-intimate sample voluntarily given].

Police Force Ordinance, (2005) Cap. 232, § 3 (H.K.) defines a “serious arrestable offence” (“嚴重的可逮捕罪行”) as “an offence for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years; or . . . any other offence specified in Schedule 2.” Schedule 2 specifies the following offences: Crimes Ordinance, (1997) Cap. 200, § 24 (criminal intimidation), § 25 (assaults with intent to cause certain acts to be done or omitted), § 118F (homosexual buggery committed otherwise than in private), (§ 120 procurement by false pretences), § 124 (intercourse with girl under sixteen), § 132 (procurement of girl under twenty one).

However, following the amendment of the Police Forces Ordinance in 2001, the Commissioner of the Hong Kong Police formulated a policy regulating the collection of non-intimate DNA samples. Under the Commissioner’s policy, DNA samples are only collected from persons suspected of commission or convicted of a serious arrestable offence listed on a “List of Selected Serious Arrestable Offences,” which is reviewed and updated from time to time. As of 2007, the Chief Superintendent of the Hong Kong Police explained that “due to resources consideration . . . only a limited number of serious arrestable offences were chosen for the collection of DNA samples.” Hung and Anor v. Commissioner of Police, [2007] 5 H.K.C. 528, 532-33 (H.K.).

³⁵ Government of Hong Kong, HONG KONG 2008, at 320 (Info. Servs. Dep’t ed., 2009) (stating that the “Criminalistics and Quality Management Group . . . handles forensic biological samples and performs DNA analysis of exhibits seized from crime scenes. . . . DNA profiles of convicted offenders, suspects and volunteers in its DNA Database are compared with outstanding DNA profiles of crime scene exhibits in unsolved cases [and] . . .

III. Sample Collection

In any investigation in respect of an offence committed or believed to have been committed, an intimate sample may be taken from a person for forensic analysis only if a police officer of or above the rank of superintendent gives written³⁶ authorization for it to be taken, the appropriate written consent is given,³⁷ and a magistrate gives approval.³⁸ Moreover, an authorizing officer may only give her authorization as if she has reasonable grounds for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence and for believing that the sample will tend to prove or disprove the commission of the offence by that person.³⁹

In any investigation in respect of any offence committed or believed to have been committed, a non-intimate sample may be taken from a person with or without his consent for forensic analysis only if that person is in police detention or is in custody on the authority of a court and a police officer of or above the rank of superintendent authorizes it to be taken.⁴⁰ An authorizing officer may only give an authorization if she has reasonable grounds for suspecting

[c]omparisons are also performed among outstanding DNA profiles of exhibits from different unsolved cases for possible connection.”).

³⁶ 232 LOHK § 59A(3) (H.K.)

³⁷ 232 LOHK § 59A(6) (H.K.)

³⁸ 232 LOHK § 59A(1)(a) to (1)(c) (H.K.). Here, “intimate sample” (“體內樣本”) means “(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair; (b) a dental impression; (c) a swab taken from a private part of a person’s body or from a person’s body orifice other than the mouth.” 232 LOHK § 3 (H.K.). “[A]ppropriate consent” (“適當的同意”) means “(a) in relation to a person who has attained the age of 18 years, the consent of that person; (b) in relation to a person who has not attained the age of 18 years, the consent both of that person and of his parent or guardian.” *Id.* See also 232 LOHK § 59B (requiring “[w]here an authorization and the appropriate consent as required under section 59A(1)(a) and (b) have been given, a police officer shall make an application to a magistrate in accordance with Schedule 3 for the magistrate’s approval as required under section 59A(1)(c) and the magistrate may give his approval in accordance with [the law]”).

³⁹ 232 LOHK § 59A(2)(1) to (2)(b). Here, “serious arrestable offence” (“嚴重的可逮捕罪行”) means “(a) an offence for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years; or (b) any other offence specified in Schedule 2 [of Ordinance No. 68 of 2000].” 232 LOHK § 3 (H.K.).

⁴⁰ 232 LOHK § 59C(1)(a) to (1)(b) (H.K.). A “non-intimate sample” (“非體內樣本”) is defined as “(a) a sample of head hair; (b) a sample taken from a nail or from under a nail; (c) a swab taken from any part, other than a private part, of a person’s body or from the mouth but not any other body orifice; (d) saliva; (e) an impression of any part of a person’s body other than (i) an impression of a private part; (ii) an impression of the face; or (iii) the identifying particulars described in section 59(6).” 232 LOHK § 3 (H.K.). Under 232 LOHK § 59(6) (H.K.), “identifying particulars” (“鑑別資料”) means “photographs, finger-prints, palm-prints, sole-prints, toe-prints and the weight and height measurements of [a] person.” “[P]rivate part” (“私處”) is defined as “the genital or anal area” and includes “the breasts in the case of a woman.” 232 LOHK § 3 (H.K.).

that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and for believing that the sample will tend to confirm or refute the commission of the offence by that person.⁴¹ An authorizing officer must give her authorization in writing.⁴² Where it is impracticable to do so, she may give such authorization orally, in which case she must confirm it in writing as soon as practicable.⁴³ A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample.⁴⁴

When a person has been convicted of a serious arrestable offence a police officer of the rank of superintendent or above may authorize the taking of a non-intimate sample of a swab from the mouth of said person for the purposes of adding the genetic profile derived from said sample to the DNA database.⁴⁵ A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample of a swab from the mouth convicted person.⁴⁶ A non-intimate sample of a swab from the mouth of a person may only be taken within 12 months after the person has been convicted of a serious arrestable offence.⁴⁷

IV. Removal Criteria

Convicted persons' profiles are kept indefinitely unless their conviction is subsequently quashed on appeal, in which case they are removed from the database.⁴⁸

No person shall have access to, dispose of, or use an intimate or non-intimate sample except for the purposes of (a) forensic analysis in the course of an investigation of any offence or any proceedings for any such offence.⁴⁹ No person shall have access to, disclose or use the

⁴¹ 232 LOHK § 59C(2)(a) to (2)(b) (H.K.).

⁴² 232 LOHK § 59C(3)(a) (H.K.).

⁴³ 232 LOHK § 59C(3)(b) (H.K.).

⁴⁴ 232 LOHK § 59C(8) (H.K.).

⁴⁵ 232 LOHK § 59E(1) (H.K.).

⁴⁶ 232 LOHK § 59E(4) (H.K.).

⁴⁷ 232 LOHK § 59E(6) (H.K.).

⁴⁸ Police Force Ordinance, (2005) Cap. 232, 59H, § 5 (H.K.).

⁴⁹ 232 LOHK § 59D(1) (H.K.).

results of forensic analysis of an intimate or non-intimate sample except for the purposes of forensic comparison and interpretation in the course of investigation of any offence, any proceedings for such an offence, making the results available to the person to whom the results relate, or for adding said results to the DNA database.⁵⁰ Whether or not an intimate or a non-intimate sample or the results thereof have been destroyed, said sample or results shall not be used in any proceedings after it is decided that the person from whom the sample was taken will not be charged with any offence or, if the person has been charged with one or more such offences, the charge is withdrawn, or the person is discharged by a court before conviction of the offence, or the person is acquitted of the offence at trial or on appeal, whichever occurs first.⁵¹

V. Sample Retention

Convicted persons' samples must be destroyed as soon as is practicable from such time as there is no other charge against the person in relation to an offence which renders the retention of the sample necessary and all proceedings (including any appeal) arising out of the conviction have been concluded;⁵² suspects samples' must be destroyed as soon as is practicable twelve months after the sample is taken if they are not charged with any offense, or if so charged when all charges are withdrawn, the person is discharged by a court before conviction of the offence or all the offences, or they are acquitted of all charges.⁵³

VI. Database Access

⁵⁰ 232 LOHK § 59D(2) (H.K.).

⁵¹ 232 LOHK § 59D(4) (H.K.).

⁵² Police Force Ordinance, (2005) Cap. 232, 59H, § 4 (H.K.).

⁵³ Police Force Ordinance, (2005) Cap. 232, 59H, § 1 (H.K.). See also *Id.* at § 6, which provides:

The Government Chemist, whilst maintaining the DNA database under section 59G(1), shall take reasonable steps to ensure that every non-intimate sample taken pursuant to section 59E [non-intimate sample obtained from person convicted of a serious arrested offence no sample from whom has otherwise been obtained] or 59F [non-intimate sample voluntarily given] is retained only for as long as is necessary to enable DNA information to be obtained from the sample, and is then destroyed.

The person from whom an intimate sample was taken is entitled to access to the information derived from the analysis of the sample.⁵⁴ The person from whom a non-intimate sample was taken pursuant to subsection is entitled to access to the information derived from the analysis of the sample.⁵⁵

⁵⁴ 232 LOHK § 59A(5) (H.K.).

⁵⁵ 232 LOHK § 59C(5) (H.K.).

Code of Criminal Procedure⁵⁶ The provision directly providing for DNA analysis, Art. 245, is the subject of Decision C-025, 2009 of the Colombian Constitutional Court. Though the court upholds the majority of the provision, it restricts its application. Article, entitled DNA Tests Involving the Suspect or the Accused, provides in relevant part:

Cuando la policía judicial requiera la realización de exámenes de ADN, en virtud de la presencia de fluidos corporales, cabellos, vello púbico, semen, sangre u otro vestigio que permita determinar datos como la raza, el tipo de sangre y, en especial, la huella dactilar genética, se requerirá orden expresa del fiscal que dirige la investigación. Si se requiere cotejo de los exámenes de ADN con la información genética del indiciado o imputado, mediante el acceso a bancos de esperma y de sangre, muestras de laboratorios clínicos, consultorios médicos u odontológicos, entre otros, deberá adelantarse la revisión de legalidad, ante el juez de control de garantías, dentro de las treinta y seis (36) horas siguientes a la terminación del examen respectivo, con el fin de establecer su legalidad formal y material.

When the judicial police requires the accomplishment of DNA examinations, by virtue of the presence of corporal fluids, hair, pubic hair, semen, blood or another vestige that allows determining data like the race, the type of blood and, especially, the genetic digital track, will require express order of the public prosecutor who directs the investigation. If required tests comparing the DNA with the genetic information of the suspect or accused, through access to sperm banks and blood samples from clinical laboratories, medical and dental clinics, among others, must anticipate the review of legality, in the courts of security control within the thirty-six (36) hours after completion of the review concerned, in order to establish its formal and material legality.

⁵⁶ Code of Criminal Procedure [Código de Procedimiento Penal], Diario Oficial No. 45.658 de 1 de septiembre de 2004, Arts. 14, 27, 245.

The court held the “clause enforceable conditional statements . . . Magistrate Dr. Rodrigo Escobar Gil [writing for the court:] ‘ . . . provided it is when the suspect is informed of the steps taken in the investigation stage prior to the formulation of imputation, is being investigated for involvement in the commission of an offense, the judge must authorize security control his participation and his attorney at the hearing later legality of such proceedings, if requested.’”

Police Act⁵⁷

Code of Criminal Procedure⁵⁸

Rules on Police Conduct⁵⁹

Law on Prisons⁶⁰

Any person whose identity is in question in the course of a criminal investigation⁶¹ and all crime scene stains.⁶²

Convicted persons' profiles are kept for twenty years after the completion of the underlying criminal proceeding.⁶³

| I. Code of Criminal Procedure (2009) | I. Code of Criminal Procedure (2009) |
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| Article 186 | Article 186 |
| (1) Police, State Attorney and the court is collected, stored and processed personal data of citizens that are important for the purposes of the criminal proceedings, taking into account the fact that it is appropriate to the nature of the need for such information in the case. For each collection of personal data these bodies establish | (1) Policija, državno odvjetništvo i sud prikupljaju, pohranjuju i obrađuju osobne podatke građana koji su važni za svrhe kaznenog postupka, vodeći računa o tome da je to primjereno naravi potrebe za takvim podacima u konkretnom slučaju. Za svaku zbirku osobnih podataka ta tijela |

⁵⁷ Zakon Kazenom Postupku [Code of Criminal Procedure], (2009) NN, 152/08 i 76/09, Arts. 185, 211, & 327 (Croat.) (hereinafter "Croatian CCP").

⁵⁸ Zakon o policiji [Police Act], (2000), Declaration No. 01-081-00-4340/2, Arts. 72, 75, & 77 (Croat.) (hereinafter "Croatian Police Act") (Croat.)

⁵⁹ Pravilnik o načinu policijskog postupanja [Rules on Police Conduct], (2003), Ministry of the Interior Regulation No. 977 (Croat.).

⁶⁰ Zakon o izvršavanju kazne zatvora [Law on Prisons], (2009) NN, 76/07, 27/08 i 83/09, Art. 59.

⁶¹ Croatian Police Act, Art. 72, § 7. It is unclear how long samples collected for identification purposes may be kept. Article 75 of the Croatian police act mandates that personal information must be immediately deleted when found to be incorrect or when the conditions permitting its inclusion have ceased to exist. However, Art. 77, § 7 provides that records made according to Art. 72, § 7 are to be kept permanently ("trajno").

⁶² Croatian CCP at Art. 327, § 4.

⁶³ Croatian CCP at Art. 327, § 6.

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| and keep records according to special regulations. | uspostavljaju i vode evidenciju prema posebnim propisima. |
| (2) Personal data collected for the purposes of the criminal proceedings may be submitted to government bodies in accordance with special legislation, and other entities only if the State Attorney or the court determines that their data is required in accordance with the law prescribed purpose . During the delivery, and will warn you that legal persons are obliged to implement measures to protect the data the person to whom the data relate. | (2) Osobni podaci prikupljeni za potrebe kaznenog postupka mogu se dostavljati tijelima državne uprave sukladno posebnom zakonu, a drugim pravnim osobama samo ako državno odvjetništvo ili sud utvrdi da su im ti podaci potrebni u skladu sa zakonom propisanom svrhom. Prilikom dostave, te će se pravne osobe upozoriti da su dužne primijeniti mjere zaštite podataka osoba na koju se podaci odnose. |
| (3) Personal information in paragraph 1 this article, may, in accordance with the regulations used in other criminal proceedings in other proceedings for criminal acts in the Republic of Croatia, in proceedings of international aid and international criminal police cooperation. | (3) Osobni podaci iz stavka 1. ovog članka, mogu se, u skladu s propisima, upotrijebiti u drugim kaznenim postupcima, u drugim postupcima za kažnjive radnje u Republici Hrvatskoj, u postupcima međunarodne kaznenopravne pomoći i međunarodne policijske suradnje. |
| (4) The Minister responsible for justice shall issue regulations on the automated collection of data for the State Attorney's Office and the courts. | (4) Ministar nadležan za pravosuđe donosi propise o automatiziranim zbirkama osobnih podataka za potrebe državnog odvjetništva i sudova. |
| Article 187 | Article 187 |
| (1) False information or data collected contrary to the provisions of Article 186 and 188th this law must, without delay, correct or delete. Accuracy of data collected by the automated system of processing records are reviewed every | (1) Netočni podaci ili podaci prikupljeni suprotno odredbama članka 186. i 188. ovog Zakona moraju se bez odgode ispraviti ili izbrisati. Točnost podataka prikupljenih u evidencijama automatiziranih sustava obrade |

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| five years. | provjerava se svakih pet godina. |
| (2) Unless a special law otherwise provided, personal information about the identity defendant deleted from the automated data collections: | (2) Ako posebnim zakonom nije drukčije propisano, osobni podaci o okrivljenikovo istovjetnosti izbrisat će se iz automatiziranih zbirki podataka: |
| five years of execution of sentence final verdict or the expiration of probation conditional sentence, | pet godina od izvršenja kazne izrečene pravomoćnom presudom ili isteka roka kušnje u uvjetnoj osudi, |
| three years of a final acquittal, | tri godine od donošenja pravomoćne oslobađajuće presude, |
| two years from the decision on imposing the sentence to a minor. | dvije godine od donošenja odluke o izricanju kaznenopravne sankcije maloljetniku. |
| (3) Instead of deleting, the court may determine that the automated collection of paragraph 2 this Article, enters a provision on the prohibition of their communication if they can be deleted only with disproportionate difficulties or costs. | (3) Umjesto brisanja, sud može odrediti da se u automatiziranu zbirku iz stavka 2. ovog članka, unese odredba o zabrani njihovog priopćavanja ako bi se oni mogli izbrisati samo uz nerazmjerne poteškoće ili troškove. |
| (4) Personal data collected exclusively on determining the identity, physical examination or molecular genetic analysis may be after the criminal proceedings, in accordance with the regulations, used only for detecting or preventing crime. | (4) Osobni podaci prikupljeni isključivo na temelju utvrđivanja istovjetnosti, tjelesnog pregleda ili molekularno-genetske analize mogu se nakon kaznenog postupka, sukladno propisima, koristiti samo radi otkrivanja ili sprječavanja kaznenog djela. |
| (5) As evidence in the cases for the following offenses in the Penal Code: murder of top government officials (Article 138), punishment for the most serious forms of crimes against the Croatian Republic (Article 155) and terrorism | (5) Kao dokaz u predmetima za sljedeća kaznena djela iz Kaznenog zakona: ubojstva najviših državnih dužnosnika (članak 138.), kažnjavanja za najteže oblike kaznenih djela protiv Republike Hrvatske (članak 155.) i |

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| (Article 169), can be extremely only use personal information used for determining the identity of the defendant, collected by the security intelligence service. | terorizma (članak 169.), mogu se iznimno upotrijebiti samo osobni podaci koji služe za utvrđivanje istovjetnosti okrivljenika, prikupljeni od strane sigurnosno obavještajnih službi. |
| Article 211 | Article 211 |
| (1) Police may order to determine the identity suspect, take him, take his fingerprints, and information on identity enter into the appropriate collection. | (1) Policija može radi utvrđivanja istovjetnosti osumnjičenika, snimati ga, uzimati mu otiske prstiju, te podatke o istovjetnosti unositi u odgovarajuće zbirke. |
| (2) In order to determine the identity of the suspects, the approval of the Attorney suspect police can publish the photo. | (2) Radi utvrđivanja istovjetnosti osumnjičenika, po odobrenju državnog odvjetnika policija može objaviti osumnjičnikovu fotografiju. |
| (3) of the suspects with a criminal offense for which a penalty of imprisonment may be without consent to take non-intimate samples for molecular genetic analysis necessary for the purposes of paragraph 1 this article. | (3) Od osumnjičenika za kazneno djelo za koje je propisana kazna zatvora, mogu se i bez privole uzeti neintimni uzorci radi molekularno-genetske analize potrebne u svrhe iz stavka 1. ovog članka. |
| (4) The Minister responsible for Home Affairs and Minister responsible for defense pass regulations on the organization and manner of keeping the collection with an automatic data processing for the purposes of paragraph 1 this article. | (4) Ministar nadležan za unutarnje poslove i ministar nadležan za obranu donose propise o ustrojstvu i načinu vođenja zbirke s automatskom obradom podataka za svrhe iz stavka 1. ovog članka. |
| (5) The Minister responsible for internal affairs in agreement with the Minister responsible for Health, shall issue regulations on the organization and manner of keeping the | (5) Ministar nadležan za unutarnje poslove u suglasnosti s ministrom nadležnim za zdravstvo, donosi propise o ustrojstvu i načinu vođenja zbirke s automatskom |

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| collection with an automatic data processing for the purposes of paragraph 3 this Article, pursuant to Article 327th paragraph 7 this Act. | obradom podataka za svrhe iz stavka 3. ovog članka, u smislu članka 327. stavka 7. ovog Zakona. |
| Article 326 | Article 326 |
| (1) Physical Review defendants, will be undertaken without his consent if it is necessary to establish the facts relevant to criminal proceedings. Physical examination of others can be taken without their consent only if it must determine whether the track or the result of criminal acts on their bodies. | (1) Tjelesni pregled okrivljenika, poduzet će se i bez njegova pristanka ako je potrebno da se utvrde činjenice važne za kazneni postupak. Tjelesni pregled drugih osoba može se bez njihova pristanka poduzeti samo ako se mora utvrditi nalazi li se određeni trag ili posljedica kaznenog djela na njihovu tijelu. |
| (2) Physical examination is performed and the search during which it enters the body cavities of the body or separate supplements or aids organ attached to the body or when to require special qualities or state of health of the person being searched. | (2) Tjelesni pregled se provodi i kod pretraga tijekom kojih se ulazi u tjelesne šupljine ili se od tijela odvajaju nadomjesci ili pomagala organa pričvršćeni uz tijelo ili kad to nalažu posebna svojstva ili zdravstveno stanje osobe koja se pretražuje. |
| (3) Taking blood and other medical actions according to the rules of medical science in order to undertake analysis and determination of other important facts for the procedure can be undertaken without the consent of the defendant, if not because of the damage occurred in his health. | (3) Uzimanje krvi i druge liječničke radnje koje se po pravilima medicinske znanosti poduzimaju radi analize i utvrđivanja drugih važnih činjenica za postupak mogu se poduzeti i bez okrivljenikove privole ako zbog toga ne bi nastupila šteta po njegovo zdravlje. |
| (4) Taking blood and other medical actions according to the rules of medical science in order to undertake analysis and determination of other important facts for the procedure can only be | (4) Uzimanje krvi i druge liječničke radnje koje se po pravilima medicinske znanosti poduzimaju radi analize i utvrđivanja drugih važnih činjenica za postupak mogu se |

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| carried out to determine whether the track or the result of criminal acts on the body other person and only with the consent of that person. The body conducting the procedure shall treat the taking of such action especially considerate to Article 16 and 43 - 46 this Act, and previously would teach people to be able to withhold consent. If you revoke the consent action is not taken. | poduzeti samo da bi se utvrdilo nalazi li se određeni trag ili posljedica kaznenog djela na tijelu druge osobe i samo uz privolu te osobe. Tijelo koje vodi postupak postupat će pri poduzimanju tih radnji posebno obzirno prema članku 16. i 43. – 46. ovog Zakona, a prethodno će se osoba poučiti da može uskratiti privolu. Ako uskrati privolu radnja se ne smije poduzeti. |
| (5) Actions referred to in paragraphs 1, 2 and 3 this article is taken before an indictment by order of Attorney, during the examination of the indictment in order accusation Council, the validity of the indictment and the order of the court before which the hearing has to spend. | (5) Radnje iz stavka 1., 2. i 3. ovog članka poduzimaju se prije podizanja optužnice po nalogu državnog odvjetnika, tijekom ispitivanja optužnice po nalogu optužnog vijeća, a nakon pravomoćnosti optužnice po nalogu suda pred kojim se ima provesti rasprava. |
| Article 327 | Article 327 |
| (1) The body conducting the procedure can determine the molecular - genetic analysis it is probable that this analysis will provide useful data to prove a crime. | (1) Tijelo koje vodi postupak može odrediti molekularno – genetsku analizu ako postoji vjerojatnost da će se tom analizom pribaviti podaci korisni za dokazivanje kaznenog djela. |
| (2) For the purposes of paragraph 1 this Article, the body conducting the procedure before and during the criminal proceedings for a criminal offense for which a penalty of imprisonment of at least six months, determined to take samples of biological material: | (2) Za svrhu iz stavka 1. ovog članka, tijelo koje vodi postupak će prije i tijekom kaznenog postupka za kazneno djelo za koje je propisana kazna zatvora najmanje šest mjeseci, odrediti da se uzmu uzorci biološkog materijala: |
| the place of committing criminal acts and other | s mjesta počinjenja kaznenog djela i drugog |

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| places where the traces of the crime, | mjesta na kojemu su tragovi kaznenog djela, |
| body with the defendants, | s tijela okrivljenika, |
| with bodies of victims, | s tijela žrtve, |
| the body of another person under the 326th Article Paragraph 4 this Act. | s tijela druge osobe pod uvjetom iz članka 326. stavka 4. ovog Zakona. |
| (3) If a person is exempt from the duties of testimony (Article 285.), before sampling, that person will be informed that he could refuse consent. Statement confirming receipt of the lessons and gives consent on the sampling of biological materials and their analysis, the testimony of persons exempt from duties will be signed. If you revoke the consent model should not be taken from that person. | (3) Ako se radi o osobi koja je oslobođena dužnosti svjedočenja (članak 285.), prije uzimanja uzorka, ta osoba će se poučiti da može uskratiti privolu. Izjavu kojom potvrđuje primitak pouke i daje privolu na uzimanje uzoraka biološkog materijala i njihovu analizu, osoba oslobođena dužnosti svjedočenja će potpisati. Ako uskrati privolu uzorak se ne smije uzimati od te osobe. |
| (4) Sampling of biological material from the place of committing a criminal offense may order the body prior to the procedure carried out search, seizure case, investigation or other evidence action. | (4) Uzimanje uzoraka biološkog materijala s mjesta počinjenja kaznenog djela može naložiti tijelo koje prije početka postupka provodi pretragu, privremeno oduzimanje predmeta, očevid ili drugu dokaznu radnju. |
| (5) Sampling and analysis of biological material not used will be to determine the person's health or character traits people. | (5) Uzimanje uzoraka biološkog materijala i analiza ne smije biti uporabljena za utvrđivanje zdravstvenog stanja osobe ili karakternih osobina osobe. |
| (6) Data collected molecular - genetic analysis of stored and preserved as a rule, twenty years after the completion of criminal proceedings. | (6) Podaci prikupljeni molekularno – genetskom analizom pohranjuju se i čuvaju u pravilu dvadeset godina nakon završetka kaznenog postupka. |
| (7) The Minister responsible for justice in | (7) Ministar nadležan za pravosuđe u |

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| accordance with the ministers responsible for health, home affairs and defense shall prescribe the conditions under which information from paragraph 6 of this article can be kept for longer period of time established by the 6th paragraph this Article, the terms of deleting information, the manner of taking samples of biological materials, storage, processing, storage and control of the storage, processing and safekeeping. | suglasnosti s ministrima nadležnima za zdravstvo, unutarnje poslove i obranu, propisuje uvjete pod kojima se podaci iz stavka 6. ovog članka mogu čuvati duže vrijeme od vremena utvrđenog stavkom 6. ovog članka, uvjete brisanja podataka, način uzimanja uzoraka biološkog materijala, pohranu, obradu, čuvanje te o nadzoru nad pohranom, obradom i čuvanjem. |
| II. Code of Criminal Procedure (2003) (§§ absent in 2009 version) | II. Code of Criminal Procedure (2003) (§§ absent in 2009 version) |
| Article 189 | Article 189 |
| (1) police authorities can in order to determine the identity of a suspect, shoot him, take his fingerprints, and the approval of the investigating judge and announce osumnjičnikovu picture. | (1) Redarstvene vlasti mogu radi utvrđivanja istovjetnosti osumnjičenika, snimati ga, uzimati mu otiske prstiju, a po odobrenju istražnog suca i objaviti osumnjičnikovu sliku. |
| (2) A person in custody may be taken without the consent of saliva or hair samples for analysis of the fundamental genetic material required for the purposes of paragraph 1 this article. | (2) Od osobe u pritvoru mogu se i bez privole uzeti uzorci sline ili dlake radi analize temeljnoga genetskog materijala potrebnog u svrhe iz stavka 1. ovoga članka. |
| (3) The Minister of Interior and Minister of Defense shall adopt regulations on the organization and manner of keeping the base with automatic data processing for the purposes of paragraph 1 this article. | (3) Ministar unutarnjih poslova i ministar obrane donijet će propise o ustrojstvu i načinu vođenja baze s automatskom obradom podataka za svrhe iz stavka 1. ovoga članka. |
| Article 282 | Article 282 |

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| <p>(1) Physical examination of suspects or defendants will be undertaken without his consent if it is necessary to establish the facts relevant to criminal proceedings. Physical examination of others can be taken without their consent only if it must be found to identify or trace the consequences of criminal acts on his body.</p> | <p>(1) Tjelesni pregled osumnjičenika, odnosno okrivljenika poduzet će se i bez njegova pristanka ako je potrebno da se utvrde činjenice važne za kazneni postupak. Tjelesni pregled drugih osoba može se bez njihova pristanka poduzeti samo ako se mora utvrditi nalazili se određeni trag ili posljedica kaznenog djela na njegovu tijelu.</p> |
| <p>(2) Taking blood and other medical actions according to the rules of medical science in order to undertake analysis and determination of other important facts for the procedure can be undertaken without the suspect or defendant for consent if it would damage occurred in his health.</p> | <p>(2) Uzimanje krvi i druge liječničke radnje koje se po pravilima medicinske znanosti poduzimaju radi analize i utvrđivanja drugih važnih činjenica za postupak mogu se poduzeti i bez osumnjičeničke, odnosno okrivljeničke privole ako zbog toga ne bi nastupila šteta po njegovo zdravlje.</p> |
| <p>(3) Actions referred to in paragraphs 1, 2 and 5 this article is taken, except in the case of Article 196 Paragraph 2 this Act, on the order of the competent court.</p> | <p>(3) Radnje iz stavka 1., 2. i 5. ovoga članka poduzimaju se, osim u slučaju iz članka 196. stavka 2. ovoga Zakona, na temelju naloga nadležnog suda.</p> |
| <p>(4) is not allowed to be the suspect, defendant or witness, or apply medical interventions that they provide such funds to influence their will in giving testimony.</p> | <p>(4) Nije dopušteno da se prema osumnjičeniku, okrivljeniku ili svjedoku primijene medicinske intervencije ili da im se daju takva sredstva kojima bi se utjecalo na njihovu volju pri davanju iskaza.</p> |
| <p>(5) The investigating judge may order the taking of confidential medical samples for analysis of the basic genetic material living person without her consent to take the person for whom there are reasonable grounds to suspect that she</p> | <p>(5) Istražni sudac može odrediti da se uzimanjem povjerljivih medicinskih uzoraka radi analize temeljnog genetskog materijala žive osobe bez njezine privole poduzme prema osobi za koju postoje osnove sumnje</p> |

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| committed the crime for which imprisonment may be imposed as a major penalty and the probability that this analysis is to obtain information important for the successful conduct of criminal proceedings. Analysis can be done in a way that provides and supervises the Ministry of Health. Thus obtained data can be stored and kept ten years after the criminal proceedings if the defendant in the proceedings due to heavy convicted of criminal acts against life and body, (Chapter X of the Criminal Code), sexual freedom and sexual morality (Chapter XIV. Criminal Law), marriage, family and youth (Chapter XVI of the Criminal Code) and health (Chapter XVIII. Criminal Code). | da je počinila kazneno djelo za koje se može izreći kazna zatvora kao glavna kazna te vjerojatnost da će se takvom analizom pribaviti podaci važni za uspješno vođenje kaznenog postupka. Analiza se može izvršiti na način koji propisuje i nadzire Ministarstvo zdravstva. Tako pribavljeni podaci mogu se pohraniti i čuvati deset godina nakon završetka kaznenog postupka ako je okrivljenik u tom postupku pravomoćno osuđen zbog teškoga kaznenog djela protiv života i tijela, (Glava X. Kaznenog zakona), spolne slobode i spolnog ćudoređa (Glava XIV. Kaznenog zakona), braka, obitelji i mladeži (Glava XVI. Kaznenog zakona) i zdravlja ljudi (Glava XVIII. Kaznenog zakona). |
| (6) Health Minister makes regulations on the manner of sampling in paragraph 2 i 5 this Article and the supervision of the taking, storage, processing and storing data in paragraph 5 this article. | (6) Ministar zdravstva donosi pravilnik o načinu uzimanja uzoraka iz stavka 2. i 5. ovoga članka te o nadzoru nad uzimanjem, pohranom, obradom i čuvanjem podataka iz stavka 5. ovoga članka. |
| III. Police Law (2000) | III. Police Law (2000) |
| Article 71 | Article 71 |
| Police collect, process and use personal information and keep records of personal and other data whose collection is authorized by this Act for the prevention and detection of crimes, offenses and violations, and finding the | Policija prikuplja, obrađuje i koristi osobne podatke te vodi evidencije o osobnim i drugim podacima na čije je prikupljanje ovlaštena ovim Zakonom radi sprječavanja i otkrivanja kaznenih djela, prijestupa i |

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| perpetrators of crimes, offenses and misdemeanors. | prekršaja te pronalaska počinitelja kaznenih djela, prijestupa i prekršaja. |
| Article 72 | Article 72 |
| Police keep records: | Policija vodi evidencije: |
| 1st person who on any ground deprived of liberty (arrest, retention, sequencing, etc.) | 1. osoba kojima je po bilo kojem osnovu oduzeta sloboda (uhićenje, zadržavanje, dovođenje, i dr.), |
| 2nd persons for whom there is reasonable suspicion of having committed crimes, offenses and misdemeanors, | 2. osoba za koje postoji osnovana sumnja da su počinile kaznena djela, prijestupe i prekršaje, |
| 3rd committed criminal acts that are public prosecution, offense, offense and persons affected these works, | 3. počinjenih kaznenih djela koja se progone po službenoj dužnosti, prijestupa, prekršaja i osoba oštećenih tim djelima, |
| 4th committed criminal acts of unknown perpetrators who claim persecution by private, | 4. počinjenih kaznenih djela nepoznatih počinitelja koja se progone po privatnoj tužbi, |
| 5th wanted persons and objects and people that are forbidden entry into the Republic of Croatia, | 5. traženih osoba i predmeta te osoba kojima je zabranjen ulazak u Republiku Hrvatsku, |
| 6th checking the identity of persons, | 6. provjere identiteta osoba, |
| 7th people over which was conducted to determine the identity, daktiloskopiranih person, the person photographed, and DNA index, | 7. osoba nad kojima je provedeno utvrđivanja identiteta, daktiloskopiranih osoba, fotografiranih osoba i DNA pretraga, |
| 8th operational reports, sources of operational knowledge and people under special police protection, | 8. operativnih izvješća, operativnih izvora saznanja i osoba pod posebnom policijskom zaštitom, |
| 9th events | 9. događaja, |

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| 10th uporabljenih means of coercion, | 10. uporabljenih sredstava prisile, |
| 11th petitions of citizens. | 11. predstavki građana. |
| Article 73 | Article 73 |
| Figures on criminal acts, signed in and affected persons, and other numerical data may be used for statistical and analytical purposes in the Ministry. | Brojčani podaci o kaznenim djelima, prijavljenim i oštećenim osobama, kao i ostali brojčani podaci smiju se koristiti u statističke i analitičke svrhe u Ministarstvu. |
| Information in paragraph 1 this Article shall be given to the use of relevant professional and scientific bodies for scientific research. | Podaci iz stavka 1. ovoga članka smiju se dati na korištenje nadležnim stručnim i znanstvenim tijelima u svrhu znanstveno-istraživačkog rada. |
| Personal data should be delivered and foreign police authorities and some international organizations on their request in accordance with the rules of international police cooperation. | Osobni podaci smiju se dostaviti i inozemnim policijskim tijelima i određenim međunarodnim organizacijama na njihov zahtjev u skladu s pravilima o međunarodnoj policijskoj suradnji. |
| Article 74 | Article 74 |
| Personal data should not be used contrary to the purposes prescribed by this Law and other regulations governing the protection of personal data. | Osobni podaci ne smiju se koristiti suprotno svrsi propisanoj ovim Zakonom kao i drugim propisima kojima se uređuje zaštita osobnih podataka. |
| Article 75 | Article 75 |
| Records collected and entered personal information must be immediately deleted when found to be incorrect or have ceased to exist reasons or conditions for which personal information is entered in the appropriate records. | Prikupljeni i u evidencije uneseni osobni podaci moraju se odmah brisati u slučaju kada se utvrdi da nisu točni ili su prestali postojati razlozi, odnosno uvjeti radi kojih je osobni podatak unesen u odgovarajuće |

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| | evidencije. |
| Special law to determine the personal information that must be stored in the archives, and so keep it protected archives. | Posebnim zakonom određuju se osobni podaci koji se moraju pohraniti u pismohrani te tako čuvati kao zaštićena arhivska građa. |
| Article 76 | Article 76 |
| The data contained in records from Article 72 this Act shall be given only to the person to whom they apply from their entry to the log data from the records. | Podaci koji su sadržani u evidencijama iz članka 72. ovoga Zakona smiju se dati samo osobi na koju se oni odnose od njihovog unošenja pa do brisanja podataka iz evidencija. |
| Notwithstanding, the information about the data contained in the records of the Article 72 Paragraph 1 paragraph 8 this Act a person shall be only after the data need no longer use. | Iznimno, obavijest o podacima sadržanim u evidenciji iz članka 72. stavka 1. točka 8. ovoga Zakona osoba smije dobiti tek nakon što je za podacima prestala potreba korištenja. |
| Police officer authorized to give information under paragraph 1 this Article must always protect the identity of the person who gave the information. | Policijski službenik ovlašten na davanje podataka iz stavka 1. ovoga članka uvijek mora zaštititi identitet osobe koja je dala obavijest. |
| Article 77 | Article 77 |
| Personal information in records from Article 72 this Act shall be kept, as follows: | Osobni podaci u evidencijama iz članka 72. ovoga Zakona se čuvaju, i to: |
| 1st in the records under item 1 three years after the decision on further proceedings against the person deprived of liberty or after release, | 1. u evidenciji pod točkom 1. tri godine nakon donošenja odluke o daljnjem postupku protiv osobe kojoj je oduzeta sloboda ili nakon što je puštena na slobodu, |
| 2nd in the records under item 2 five years after the rehabilitation period when performance by | 2. u evidenciji pod točkom 2. pet godina poslije roka kada rehabilitacija nastupa po sili |

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| the force of law, provided that the person has not re-reported, | zakona pod uvjetom da osoba nije ponovo prijavljena, |
| 3rd in the records under paragraph 3 five years after the statute of limitations for the prosecution committed a crime, | 3. u evidenciji pod točkom 3. pet godina nakon zastare progona za počinjeno kazneno djelo, |
| 4th in the records under item 4 one year after the statute of limitations for the prosecution committed a crime, | 4. u evidenciji pod točkom 4. jednu godinu nakon zastare progona za počinjeno kazneno djelo, |
| 5th in the records under item 5 to find a person or fortifications that further search unnecessary, | 5. u evidenciji pod točkom 5. do pronalaska osobe ili utvrđenja da je dalje traženje nepotrebno, |
| 6th in the records under the 6th point two years after the authentication process, | 6. u evidenciji pod točkom 6. dvije godine nakon provedenog postupka provjere identiteta, |
| 7th in the records under paragraph 7, 8 and 9 permanently | 7. u evidenciji pod točkom 7., 8. i 9. trajno, |
| 8th in the records for point 10 ten years from the use of means of coercion, | 8. u evidenciji po točkom 10. deset godina od uporabe sredstava prisile, |
| 9th records in the 11th point ten years from the admission of citizens petitions. | 9. u evidenciji pod točkom 11. deset godina od prijma predstavke građana. |
| Article 78 | Article 78 |
| Monitoring of activities of information system in which records are stored in Article 72 this Act does the body responsible for the protection of personal data in accordance with the law regulating the protection of personal data. | Nadzor nad djelovanjem informacijskog sustava na kojem su pohranjene evidencije iz članka 72. ovoga Zakona obavlja tijelo nadležno za zaštitu osobnih podataka sukladno zakonu kojim se uređuje zaštita osobnih podataka. |

| IV. Rules of Police Conduct (2003) | IV. Rules of Police Conduct (2003) |
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| Article 7 | Article 7 |
| Determining the identity of a person is carried out using the methods and means of criminal investigation techniques and tactics and use of medical and other appropriate procedures, as follows: | Utvrđivanje identiteta osobe provodi se korištenjem metoda i sredstava kriminalističke tehnike i taktike te primjenom medicinskih i drugih odgovarajućih postupaka, i to: |
| 1st checking the data on the civil status of persons (in examining public documents, registers of births, marriages, deaths and other official records); | 1. provjerom podataka o građanskom statusu osobe (uvidom u javne isprave, matice rođenih, vjenčanih, umrlih i druge službene evidencije); |
| 2nd taking fingerprints papillary lines and comparison with existing prints; | 2. uzimanjem otisaka papilarnih crta i usporedbom s postojećim otiscima; |
| 3rd photographing and comparing the photos with the existing; | 3. fotografiranjem i usporedbom fotografije s postojećom; |
| 4th saying that people can recognize it either directly or by presenting photographs, clothing, shoes and other items that can be used for identity; | 4. iskazom osoba koje ju mogu prepoznati izravno ili predocjenjem fotografija, odjeće, obuće i drugih predmeta koji mogu poslužiti za utvrđivanje identiteta; |
| 5th with personal descriptions; | 5. pomoću osobnog opisa; |
| 6th by determining the structure of DNA; | 6. pomoću utvrđivanja strukture DNA; |
| 7th other available methods (superposition, grafološko expertise, voice analysis, dental formula, etc.). | 7. drugim raspoloživim metodama (superpozicija, grafološko vještačenje, analiza glasa, zubna formula i dr.). |
| Methods and procedures laid down in paragraph 1 Item 2, 6 and 7 of this article can be applied in determining the identity of persons for which | Metode i postupci utvrđeni stavkom 1. točkom 2., 6. i 7. ovoga članka mogu se primijeniti prilikom utvrđivanja identiteta |

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| there are reasonable grounds to suspect that she committed a crime or an offense based solely on its written consent. Police officer shall, before giving consent to the signature, the person who gives consent explain the reasons for the application of power to determine identity. | osobe za koju ne postoje osnove sumnje da je počinila kazneno djelo ili prekršaj isključivo na temelju njenog pisanog pristanka. Policijski službenik dužan je, prije davanja pristanka na potpis, osobi koja daje pristanak obrazložiti razloge primjene ovlasti utvrđivanja identiteta. |
| V. Law on Prisons | V. Law on Prisons |
| Article 59 | Article 59 |
| (2) If a prisoner convicted of a criminal offense for which the penalty of imprisonment of at least 6 months and if during his criminal proceedings in accordance with the provisions of the Criminal Procedure Act is not exempt biological material to perform molecular-genetic analysis, the prisoner will be taking specific personal data under paragraph 1 this article exclude biological material to perform molecular-genetic analysis. | (2) Ako je zatvorenik osuđen za kazneno djelo za koje je propisana kazna zatvora od najmanje 6 mjeseci te ako mu tijekom kaznenog postupka u skladu s odredbama Zakona o kaznenom postupku nije izuzet biološki materijal radi obavljanja molekularno-genetičke analize, zatvoreniku će se uz uzimanje posebnih osobnih podataka iz stavka 1. ovoga članka izuzeti i biološki materijal radi obavljanja molekularno-genetičke analize. |
| (3) Exclusion of samples from paragraph 2 this article is allowed without the consent of the prisoners. | (3) Izuzimanje uzoraka iz stavka 2. ovoga članka dopušteno je bez privole zatvorenika. |
| (4) methods of sampling biological material from paragraph 2 this article, storage, processing, storage and control storage, processing and preserving, a time to keep the data obtained by performing molecular-genetic | (4) Način uzimanja uzoraka biološkog materijala iz stavka 2. ovoga članka, pohrana, obrada, čuvanje te nadzor nad pohranom, obradom i čuvanjem, vrijeme čuvanja podataka dobivenih obavljanjem |

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| analysis and log data requirements shall be in accordance with the regulations of the 327th Article paragraph 7 Code of Criminal Procedure. | molekularno-genetičke analize kao i uvjete brisanja podataka obavlja se u skladu s pravilnikom iz članka 327. stavka 7. Zakona o kaznenom postupku. |
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I. Law on Point

No law directly on point; operating under the Police Law⁶⁴ and Protection of Personal Data Act.^{65,66}

II. Entry Criteria: All convicted persons, suspects, and crime scene stains⁶⁷

III. Sample Collection

Cypriot law places now restrictions on the collections of samples from crime scenes. However, it only permits the police to forcibly collect a sample from an individual suspected of a crime upon a court order. Otherwise, the suspect's written permission is required. Immediacy following sentencing a sample can be collected from a convicted offender. In the case of minors, without the permission of a legal guardian, the police must seek court approval. The court is permitted to consider the guardian's reasons for refusing consent as well as other relevant circumstances in rendering its decision. The same procedure applies to the mentally handicapped and mentally ill, with the addition that the court must hear expert medical advice in the process of granting or denying the police's application.

IV. Removal Criteria

Convicted persons' profiles are kept indefinitely unless their record is subsequently expunged according to the Reestablishment Act. Suspects' profiles are removed when they are acquitted or otherwise cleared of all charges, and crime scene stains are kept until they are identified⁶⁸

V. Sample Retention: All samples follow fate of DNA profile.⁶⁹

DNA samples of crime suspects can be retained up to the stage of court hearing or until the completion of an investigation. If no charges are filed or the person is not sentenced by the court, the DNA sample has to be removed from the database. The DNA samples of convicted

⁶⁴ Law 73(I)/2004

⁶⁵ Law 138(I)/2001

⁶⁶ E.U. 9445/1/06 at 5-6.

⁶⁷ See EU Current Practices at 39.

⁶⁸ See EU Current Practices at 40.

⁶⁹ See EU Current Practices at 39.

offenders are retained indefinitely unless the person's record is cleared according to the Reestablishment Act.

VI. Database Access

Cyprus Police Headquarters in close collaboration with the Laboratory of Forensic Genetics, Cyprus Institute of Neurology & Genetics. The Director of the Laboratory of Forensic Genetics and staff members at the director's direction have access to the genetic profiles, sample numbers, date of entry of the profiles and the DNA samples. DNA profiles can be exchanged with other EU Member States through Interpol contact points. It is currently not possible to exchange the DNA profiles electronically.⁷⁰

⁷⁰ E.U. 9445/1/06 at ***.

I. Law on Point

Criminal Procedure Act,⁷¹ Law on Police,^{72,73} and Binding Instruction No. 88/2002 of the President of the Police⁷⁴

⁷¹ See Zákona o Policii [Law on Police] č. 283/1991 Sb., § 42e, which provides:

(1) The policeman who in the performance of the police can not obtain personal information, allowing future identification, otherwise, is authorized for persons accused of committing a criminal offense for persons sentence of imprisonment for committing a deliberate crime, persons who have been saved protective treatment, or for persons found, after which the search was launched and which have competence legal proceedings in their entirety,

- a) scan fingerprint impressions,
- b) identify physical characteristics,
- c) measurements of the body,
- d) take video, audio, and similar records, or
- e) take biological samples, by providing information on genetic equipment.

(2) detection of the external physical characteristics and measurements of the body referred to in paragraph 1, the police same sex or at the request of professionally qualified health professional, taking blood or collection of other biological material, which is triggered by physical integrity, carried out request the police only technically qualified healthcare professional. A similar procedure for the collection, which is triggered by physical integrity, if the people there overcome resistance. Collection biological samples are implemented in a manner that may endanger a person.

(3) Where an act referred to in paragraph 1 for resistance to a person unless the taking of blood or other similar operation triggered by physical integrity, is a police officer after the previous call in vain empowered to overcome this resistance. Way of overcoming the resistance to be adequate intensity resistance.

⁷² E.U. 9445/1/06 at 6.

⁷³ See Trestní Řád [Criminal Procedure Act] č. 141/1961 Sb., § 114, entitled “Tours of the body and other similar acts,” which provides:

(1) The inspection body is required to submit everywhere absolutely necessary determine whether the traces of his body or the crime. If inspection of the body performed by a doctor, it can make a person same sex.

(2) If the evidence needed to test blood or other similar act person is at stake, is required to endure, to her doctor or specialist health worker went to her blood, or made any other necessary act, unless associated with danger to her health. Collection biological material which is not related to intervention in the physical integrity of the person such an act relates, and may make that person or with his consent authority of law enforcement. At the request of law enforcement authority, this sampling procedure may without the consent of the suspect or accused to a doctor or health professional.

(3) If the evidence necessary to ascertain the identity of the person who stayed on the scene, the person at stake, is required to submit to acts required for such a finding.

II. Entry Criteria

All convicted persons and crime scene stains⁷⁵

III. Sample Collection

IV. Removal Criteria

Convicted persons' profiles are kept for eighty years after they are entered and crime scene stains are kept until they are identified⁷⁶

V. Sample Retention

All samples follow fate of DNA profile⁷⁷

VI. Database Access

Genetic department - Institute of Criminalistics, Prague (the Czech Police)

CODIS v. 5.7

(4) Where an act referred to in paragraphs 1 to 3 the resistance of the suspect accused to make a save in the collection of blood or other similar act triggered by physical integrity, is the enforcement authority proceedings shall be entitled to prior notice in vain to overcome this resistance; police authority needs to overcome the resistance of the suspect prior approval of a prosecutor. Way of overcoming the resistance to be adequate intensity of resistance.

(5) The obligations under the preceding paragraph shall be a person learned to ONU warning of the consequences of failure to comply (§ 66), a suspect or accused shall learn about the possibility of the procedure under paragraph 4.

⁷⁴ Závazném pokynu policejního prezidenta č. 88/2002; see also Radka Šimková, legislativní problémy národní databáze dna [Legislative Problems of the National DNA Database], KRIMINALISTIKA, vol. XXXVI no. 3, available at http://web.mvcr.cz/archiv2008/casopisy/kriminalistika/2003/03_03/index.html (2003) (Czech Rep.); Pavel Vantuch, Národní databáze DNA a odběr biologického materiálu obviněným [National DNA Database and the Collection of Biological Material Indicted], TRESTNĚPRÁVNÍ REVUE [Criminal Revue], Jan. 2004, available at http://www.ipravnik.cz/cz/clanky/trestni-pravo/art_3732/narodni-databaze-dna-a-odber-biologickeho-materialu-obvinenym.aspx (Czech Rep.); Emil Vančo, Policie České republiky – Kriminalistický ústav Praha [Police of the Czech Republic – Prague Institute of Forensics], Policie ČR nezneužívá DNA [Czech Police Do Not Abuse DNA], <http://www.policie.cz/clanek/policie-cr-nezneuziva-dna.aspx> (2008) (Czech Rep.)

⁷⁵ See EU Current Practices at 41.

⁷⁶ See EU Current Practices at 41.

⁷⁷ See EU Current Practices at 41.

I. Law on Point

Law Establishing a Central DNA Profile Register^{78,79}

II. Entry Criteria

Convicted persons, suspects charged of a offence that could lead to a prison sentence of 1½ years or more, and all crime scene stains⁸⁰

Danish law places no restrictions on the entry of DNA profiles that are derived from unidentified crime scene stains or convicted offenders. Suspects' DNA profiles may only be placed on the database when said person is formally charged with a crime that is punishable by not less than one and one half years imprisonment.

III. Sample Collection

Danish police are empowered to take DNA samples from unidentified crime scene stains, convicted offenders and crime suspects. They may also do so as in the case of the mentally ill as well as minors.

IV. Removal Criteria

Convicted persons' and suspects' profiles are kept until two years after their death or upon their reaching age eighty and crime scene stains are retained for the "prescribed term" of the case as determined by law.⁸¹ Danish law only permits the removal of DNA profiles derived from unidentified crime scene stains upon the expiration of specific periods of time, depending on the underlying crime, specified by law.⁸²

⁷⁸ Law Establishing a Central DNA Profile Register, Law No. 434 of 31 May 2000, as amended by § 1 of Law No. 369 of 24 May 2005, Law No. 1559 of 20 December 2006, § 3 of Law No. 347 of 14 May 2008, and § 1 of Law No. 479 of 17 June, 2008.

⁷⁹ Council of the European Union, Ad hoc Group on Information Exchange, DNA Databases to Assist with Criminal Investigations, at 6, E.U. Doc. No. 9445/3/06 (REV 3) (Jun. 16, 2006) (hereinafter "E.U. 9445/3/06").

⁸⁰ See EU Current Practices at 42.

⁸¹ See EU Current Practices at 42-43.

⁸² See Danish Penalty Act, Law No. ** of ****.

V. Sample Retention

Samples follow fate of DNA profile⁸³

Danish law is silent on the question of the retention or destruction of DNA samples. In most cases, the samples follow the fate of the DNA Profile derived therefrom.

VI. Database Access

The police, the prosecutor, the Ministry of Justice, members of the forensic department (University of Copenhagen) and the ombudsman of the parliament have access to all the relevant personal information that is connected to the various DNA profiles. The DNA profile information can be exchanged with other EU Member States through Interpol.

⁸³ See EU Current Practices at 43.

I. Law on Point

Government of the Republic Act, Databases Act, Police Act, Personal Data Protection Act, Code of Criminal Procedure and Decree of National Police Commissioner.⁸⁴

II. Entry Criteria

Persons convicted of or arrested for any recordable offence and all crime scene stains⁸⁵

Estonian law provides that upon suspicion or conviction of any recordable offense a person's DNA profile is to be entered into the national DNA database. No restrictions apply to DNA profiles derived from unidentified crime scene stains, and thus all are typically entered onto the database.

III. Sample Collection

As noted above, Estonian law places no limits on law enforcements' authority to collect unidentified crime scene stains. Moreover, the Estonian police are empowered to forcibly take DNA samples from persons suspected or convicted of any offense, including minors. The law is silent on taking DNA samples from the mentally ill.

IV. Removal Criteria

Convicted persons' and suspect's profiles are kept for ten years after their death and crime scene stains are kept for seventy-five years after they are entered⁸⁶

The DNA profiles of suspects and convicted offenders must be removed from the DNA database ten years after their deaths. The DNA profiles that are derived from unidentified crime scene stains have to be removed seventy-five years after they are entered onto the database.

V. Sample Retention

All samples are retained indefinitely⁸⁷

⁸⁴ E.U. 9445/1/06 at 6.

⁸⁵ See EU Current Practices at 44-45.

⁸⁶ See EU Current Practices at 45.

⁸⁷ See EU Current Practices at 45.

Estonian law is silent on the question of the retention or destruction of DNA samples. In the absence of legal guidance, the samples are customarily retained.⁸⁸

VI. Database Access

The authorized processor of the DNA database is Forensic Service Centre. Scientists and laboratory personnel have access to all data on the DNA samples, DNA profiles and the matches which are established. The DNA profile information can be exchanged with other EU Member States through Interpol.

CODIS software is used for DNA database + MYSQL software for background database (sample data).

⁸⁸ Id.

Finland Yes, since September 1999

I. Law on Point^{89,90}

Coercive Measures Act⁹¹

Police Act⁹²

Police Personal Data File Act⁹³

II. Entry Criteria

Convicted persons serving a prison sentence of 3 years or more, suspects charged of a crime that could lead to a prison sentence of 6 months or more, and all crime scene stains⁹⁴

Finish law directs that the DNA profiles of persons suspected of crimes punishable by not less than six months' imprisonment may be entered onto the national DNA database. Further, the

⁸⁹ E.U. 9445/1/06 at 6.

⁹⁰ Law No. 450 of 30 April 1987, Ch. 6, § 5, as amended by Law No. 1098 of 8 December 2006, provides in pertinent part:

A suspect may be subjected to a bodily search for the purposes of analyzing his/her DNA profile when the maximum punishment provided for the offence is imprisonment for at least six months. In order to conduct the duties referred to in section 1, paragraph 1 in the Police Act (493/1995), a DNA profile may be recorded in a police personal data file. A DNA profile containing information on the data subject personal characteristics other than sex shall not be recorded in a police personal data file.

Provisions on the erasure of DNA profiles from a data file are included in the Police Personal Data File Act, No. 761 of 22 August 2003, § 22(9a), as amended by Law No. 529 of 15 July 2005, entitled "Erasure of DNA-profiles from a Police Personal Data File," provides in relevant part:

A DNA-profile recorded in a police personal data file on the basis of Coercive Measures Act, Chapter 6, Section 5 shall be erased from a file one year after since the controller of the file has received information on the decision made by a prosecutor stating that it is not a question of an offence or there is no evidence of an offence or the fact that the charge pressed against the data subject has been dismissed by a legally valid judgment or the punishment has been nullified. If the profile has not been erased earlier, it shall be erased after 10 years of the death of data subject. The stored samples will be destroyed at the same time when the corresponding DNA-profiles are erased.

⁹¹ Law No. 450 of 30 April 1987, as amended by Law No. 646 of 27 May 2003 and Law No. 1098 of 8 December 2006, Ch. 5, §§ 11, 12, and Ch. 6, § 5 (Fin.).

⁹² Law No. 493 of 7 April 1995, § 1.

⁹³ Law No. 761 of 22 August 2003, as amended by Law No. 529 of 15 July 2005 and Law No. 851 of 29 September 2006, §§ 2(9) & 22(9a) (Fin.)

⁹⁴ See EU Current Practices at 46-47.

DNA profiles of persons convicted of crimes punishable by no fewer than three years' incarceration or persons undergoing coerced treatment for a mental disorder may be lawfully placed on the database.⁹⁵ The law is silent on entry of profiles derived from unidentified crime scene stains and current practice is to include said profiles on the national DNA database for comparative purposes.⁹⁶

III. Sample Collection

The Coercive Measure Act permits the forcible taking of a genetic sample from any person suspected of a crime punishable by not less than six months' imprisonment. Law No. 851 of 29 September 2006 amending the Coercive Measure Act allows for the coercive taking of genetic sample from individuals convicted of crimes punishable by at least three years' incarceration.⁹⁷ DNA samples which are found at crime scenes can also be collected. Finish law also permits the taking of genetic samples from a minor when deemed necessary for any criminal investigation. Profiles derived from these samples, however, cannot be entered into the database.⁹⁸ The police further empowered to collect genetic samples from mentally ill persons who are suspected or convicted of any crime.

IV. Removal Criteria

Convicted persons' profiles are kept for ten years after the death of the convicted person, suspects' profiles are deleted within one year of a prosecutorial determination that there is no evidence of an offence, charges have been dismissed, when their sentence has been nullified, or ten years after the suspects death if not removed earlier; crime scene stains are kept indefinitely^{99,100}

V. Sample Retention

⁹⁵ See *supra* notes 90 and 93 and accompanying text.

⁹⁶ See EU Current Practices at 46-47.

⁹⁷ See *supra* note 91 and accompanying text.

⁹⁸ See *supra* note 93, § 22(9a), ¶ 2, ¶ 2(1) to (3).

⁹⁹ See EU Current Practices at 47.

¹⁰⁰ See *supra* note 93.

Convicted persons' samples must be destroyed ten years after their death, suspects' samples must be destroyed within one year of a prosecutorial determination that there is no evidence of an offence, charges have been dismissed, when their sentence has been nullified, or ten years after the suspects death if not removed earlier¹⁰¹

VI. Database Access

The custodian of the Finnish National DNA database is the National Bureau of Investigation (NBI) Crime Laboratory.¹⁰² The database managers and the reporting scientists have access to the DNA profiles themselves, information regarding the underlying criminal cases and the names and social security codes of the included persons. Finland exchanges its DNA profiles through Interpol. The Finnish DNA database is based on the CODIS architecture. The CODIS software is provided by FBI. The CODIS system does not include any personal/additional information on the profiles in the system, but that kind of information is included in any other database.

¹⁰¹ See EU Current Practices at 47.

¹⁰² The DNA Database is a part of a national police database covering personal data of persons suspected and/or convicted of crimes. The Ministry of the Interior is responsible of the database.

I. Law on Point

Code of Criminal Procedure¹⁰³

Law No. 98-468 of June 17, 1998¹⁰⁴

Law No. 2001-1062 of November 15, 2001¹⁰⁵

Law No. 2003-239 of March 18, 2003¹⁰⁶

Decree No. 2000-413 of May 18, 2000¹⁰⁷

Decree No. 2002-697 of April 30, 2002¹⁰⁸

Decree No. 2004-470 of May 25, 2004¹⁰⁹

Decree No. 2004-71 of May 25, 2004¹¹⁰

Decree No. 2009-785 of June 23, 2009.¹¹¹

Deliberation No. 2008-113 of May 14, 2008¹¹²

Circular of the Ministry of Justice of 27 July 2004¹¹³

II. Entry Criteria

¹⁰³ Code of Criminal Procedure (hereinafter “C. Pr. Pén.”), Book III, Title XX [Du fichier national automatisé des empreintes génétiques] [The National Computerized Genetic Information Database] (Fr.).

¹⁰⁴ Law No. 98-468 of June 17, 1998, Journal Officiel de la République Française [J.O.] [Official Gazette of France] June 18, 1998, p. 9255 (Fr.).

¹⁰⁵ Law No. 2001-1062 of November 15, 2001, Journal Officiel de la République Française [J.O.] [Official Gazette of France] November 16, 2001, p. 18215 (Fr.).

¹⁰⁶ Law No. 2003-239 of March 18, 2003, Journal Officiel de la République Française [J.O.] [Official Gazette of France], March 19, 2003, p. 4761 (Fr.).

¹⁰⁷ Decree No. 2000-413 of May 18, 2000, Journal Officiel de la République Française [J.O.] [Official Gazette of France], May 19, 2000, Text No. 16 (Fr.).

¹⁰⁸ Decree No. 2002-697 of April 30, 2002, Journal Officiel de la République Française [J.O.] [Official Gazette of France], May 3, 2002, Text No. 69 (Fr.).

¹⁰⁹ Decree No. 2004-470 of May 25, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], June 2, 2004, Text No. 21 (Fr.).

¹¹⁰ Decree No. 2004-471 of May 25, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], June 2, 2004, Text No. 22 (Fr.).

¹¹¹ Decree No. 2009-785 of June 23, 2009, Journal Officiel de la République Française [J.O.] [Official Gazette of France], June 25, 2009, Text No. 16 (Fr.).

¹¹² Deliberation No. 2008-113 of May 14, 2008, Journal Officiel de la République Française [J.O.] [Official Gazette of France], June 25, 2009, Text No. 98 (Fr.).

¹¹³ E.U. 9445/1/06 at 6.

Persons convicted of or charged with a serious offence (list in law) and crime scene stains when deemed relevant¹¹⁴

French law provides that genetic profiles of persons convicted of one certain enumerated offences are to be entered onto the Fichier National Automatisé des Empreintes Génétiques [Automated National Database of Genetic Fingerprints] (hereinafter “FNAEG”).¹¹⁵ The crimes specified are: (1) offences of a sexual nature;¹¹⁶ (2) crimes against humanity, felonies involving intentional attacks on human life, torture and acts of barbarity, intentional violent acts, threatening personal violence, drug trafficking, offences against human liberty, human trafficking, procuring, the exploitation of begging, and the endangerment of minors;¹¹⁷ (3) felonies and misdemeanors which constitute theft, extortion, fraud, destruction, damage and threats to attack property;¹¹⁸ (4) violations of the fundamental interests of the nation, terrorist acts, forging currency, and criminal associations;¹¹⁹ (5) certain other misdemeanors;¹²⁰ and (6) offences relating to handling or laundering of the proceeds of crimes included in numbers (1) to (5).¹²¹

The DNA profiles of persons against whom there is serious or corroborating evidence rendering it likely that they have committed any of the offences mentioned above are also stored in this database by order of the judicial police officer either automatically or at the request of the district prosecutor or of the investigating judge.¹²² French law also permits genetic profiles derived from unidentified crime scene stains collected during the investigation into causes of death or missing persons to be store in FNAEG .¹²³

¹¹⁴ See EU Current Practices at 49.

¹¹⁵ C. Pr. Pén., Book III, Title XX, Art. 706-55.

¹¹⁶ See C. Pr. Pén., Art. 706-47; Penal Code (hereinafter “C. Pén.”) Art. 222-32.

¹¹⁷ See C. Pén., Arts. 221-1 to 221-5, 222-1 to 222-18, 222-34 to 222-40, 224-1 to 224-8, 225-4-1 to 225-4-4, 225-5 to 225-10, 225-12-1 to 225-12-3, 225-12-5 to 225-12-7 and 227-18 to 227-21.

¹¹⁸ See C. Pén., Arts. 311-1 to 311-13, 312-1 to 312-9, 313-2 and 322-1 to 322-14.

¹¹⁹ See C. Pén., Arts. 410-1 to 413-12, 421-1 to 421-4, 442-1 to 442-5 and 450-1.

¹²⁰ See Defense Code, Arts. L 2353-4 and L 2339-1 to L 2339-11.

¹²¹ See C. Pén., Arts. 321-1 to 321-7 and 324-1 to 324-6.

¹²² C. Pr. Pén., Art. 706-54.

¹²³ C. Pr. Pén., Art. 706-54.

III. Sample Collection

French law permits any district prosecutor, upon written order, to compel a genetic sample from any person sentenced to imprisonment for not less than ten years for analysis and inclusion in FNAEG.¹²⁴ In all other cases, refusal to consent to DNA sampling is punishable by up to one year in prison and a fine of €15,000.¹²⁵ When the underlying offense has been allegedly committed by a person already convicted of a felony, refusal to submit to the taking of a DNA sample is punishable to up to two years in prison and a fine of €30,000.¹²⁶ Thus, while the law is tetchily silent on the question of consent,¹²⁷ refusal to consent is optional in only the most illusory of senses.

IV. Removal Criteria

Convicted persons' profiles are kept for forty years after conviction upon their eightieth birthday, suspects' profiles are removed by motion of the prosecutor or the individual upon grounds that their storage no longer serves its original purpose, and crime scene stains are deleted forty years after they have been analyzed¹²⁸ French law directs that the genetic profiles of persons suspected of the above-enumerated crimes can be erased on any district prosecutor's instructions, either on their own initiative or at the request of the suspect, where keeping them is no longer necessary in light of the reason for which they were created.¹²⁹ For example, a suspects' profile must be removed when insufficient evidence is produced linking him or her to the suspected crime or in the case that they are ultimately acquitted of all charges. Convicted offenders' profiles are removed from the database forty years after their conviction or when they reach the age of eighty years. DNA profiles which are derived from unidentified biological material are removed forty years after analysis.¹³⁰

V. Sample Retention

¹²⁴ C. Pr. Pén., Art. 706-56, § 1.

¹²⁵ C. Pr. Pén., Art. 706-56, § 2.

¹²⁶ 127147682, Art. 706-56, § 2.

¹²⁷ The one exception being that mentioned previously admitting of the coercive taking of a sample from anyone sentenced to more than ten years imprisonment.

¹²⁸ See EU Current Practices at 49-50.

¹²⁹ C. Pr. Pén., Art. 706-54.

¹³⁰ See EU Current Practices at 50.

Convicted persons' samples are retained for forty years after their conviction or until their eightieth birthday; suspects' samples are kept until conviction or acquittal: i.e. procedurally, DNA samples are treated as regular evidence¹³¹

VI. Database Access

Decisions regarding database access are made by the Direction Centrale de la Police Judiciaire—Sous Direction de la Police Technique et Scientifique [Central Directorate of the Judicial Police—Sub-directorate of the Technical and Scientific Police].¹³² Judicial police officers have only access to the identity, place of birth and the date of birth. Judicial police officers and magistrates are also informed on the matches that might be found in the database. DNA profiles can be exchanged with the other EU Member States through Interpol or rogatory letters on the condition of legal compatibility. As France has signed the Convention of Prüm, it will have automatic access to the database of its contracting partners in the near future. FNAET is an Oracle database with WEB architecture.

¹³¹ See EU Current Practices at 50.

¹³² “Il existe également un comité de contrôle composé d’un magistrat du parquet hors hiérarchie assisté de trois spécialistes (un magistrat, un informaticien et un généticien) qui s’assure du bon fonctionnement du fichier conformément à la législation en vigueur.” E.U. 9445/1/06 at *****n.*****

I. Law on Point

For the provision and examination of DNA samples: §§ 81a, 81e, 81f and 81g Rules of Legal Procedure (Strafprozessordnung); § 3 DNA-Identitätsfeststellungsgesetz (“act for the establishment of identity”).

For the maintenance of the database: § 3 Identitätsfeststellungsgesetz and §§ 2, 7 and 8 Bundeskriminalamtgesetz (act for the Federal Criminal Investigation Office)

Content of the German DNA-database: DNA-identification codes of known perpetrators and “latents” (samples secured as evidence at scenes of crimes).¹³³

II. Entry Criteria

Persons convicted of a serious offence or repeatedly committing the same minor offence, suspects charged of a serious offence, and crime scene stains when related to any recordable offence¹³⁴

The German forensic DNA database is governed by the Bundeskriminalamt (BKA). The DNA profiles that are derived from unidentified crime scene stains can be entered into the database if they are possibly related to any recordable offence.¹³⁵ Crime suspects’ DNA profiles can only be entered into the database when they are possibly involved in a serious criminal offence or when they are suspected to commit a serious offence in the future.¹³⁶ Entry of the profiles of convicted offenders is allowed when they are irrevocably sentenced for a serious criminal offence. Since 2005, DNA profiles of offenders who are sentenced for repeatedly committing the same ‘minor offence’ can also be entered into the database. The DNA profiles of individuals who are not irrevocably sentenced due to irresponsibility and whose files are not removed from the Bundeszentralregister [federal central register] or the Erziehungsregister [register of upbringing], can also be entered into the DNA database.¹³⁷

¹³³ E.U. 9445/1/06 at 6.

¹³⁴ See EU Current Practices at 52.

¹³⁵ Id.

¹³⁶ Errichtungsordnung DNA Analyse Datei, Art. 2.2, §3a to b.

¹³⁷ Id. at Art. 2.2, § 3c.

III. Sample Collection

The German Criminal Procedure Code (Strafprozeßordnung) allows for the taking of blood samples and other biological material from crime suspects without their consent when this act is considered necessary for the investigation. The authority to start such procedure is vested in a judge. If this procedure could possibly lead to a delay that could endanger the success of the investigation, the public prosecution office may also order such a procedure. For all other situations, consent of the suspect is necessary.¹³⁸ Consent is usually needed in order to take a DNA sample from a convicted offender. Coercive sampling can only be ordered by a judge and only when it concerns an individual who is convicted for a sexual offence or another serious offence and when it is very likely that the convicted person will commit a similar offence in the future. Individuals who repeatedly commit the same minor offence will be treated as if they have committed a serious offence.¹³⁹

The taking of a sample from third persons such as witnesses without their consent is only admissible if this measure is considered indispensable for establishing the truth. Again, this procedure can only be started by courtesy of a judge or, on the above described conditions, by the public prosecution office. Although this may be refused for the same reasons as a testimony may be refused, the judge can allow the use of direct force in order to gather a sample. This can only be done when the individual insists on the refusal despite the imposition of a coercive fine or when there are exigent circumstances.¹⁴⁰ A DNA sample may be taken from minors (14-17 years), but normally only upon their legal guardians' consent. A DNA sample may be taken from a mentally ill person if it is very likely that this person will commit a similar offence in the future.¹⁴¹

IV. Removal Criteria

¹³⁸ Code of Criminal Procedure, § 81a: 1-3.

¹³⁹ Id., § 81g: 1.

¹⁴⁰ Id., §81c: 1-6.

¹⁴¹ See EU Current Practices at 53.

Convicted persons' and suspects profiles are removed when their retention is no longer necessary and crime scene stains must be deleted after 30 years of their entry¹⁴²

Unidentified DNA profiles must be removed from the database at the latest after thirty years, but most of the crime scene stains are removed after ten years. Only a few will be never removed, or only when the related crime is solved (e.g. murder, genocide). Regarding the DNA profiles of convicted offenders, the law stipulates a certain period after which shall be decided whether the profiles shall be removed from the database or not. This period is five years for minors and ten years for adults. Counting starts the moment the sentence has passed. The DNA profiles of crime suspects are removed from the database when retaining them seems no longer necessary or deemed inappropriate. This is the case when the suspect is acquitted, the case is dismissed, prosecution is aborted or when it is believed that the person will not commit a serious offence in the future.¹⁴³

V. Sample Retention

Convicted persons' and suspects' samples must be destroyed when they are no longer considered useful for investigatory purposes¹⁴⁴

Only unidentified DNA samples can be retained for further purposes (e.g. follow-up analysis). If they are no longer necessary for the criminal proceeding, DNA-samples of known persons must be destroyed immediately after analysis.¹⁴⁵

VI. Database Access

Officials of the BKA and the Central Investigation offices of the sixteen Federal States have direct access to the database. Public prosecution services can also be provided with data from the database for criminal justice purposes. Authorized persons have access rights to all the data contained in the database: police service concerned and its reference number, criminal offence, laboratory charged with the examination and its reference number, formula for making the data anonymous and unique identification number of the data set, personal data of known

¹⁴² See EU Current Practices at 53.

¹⁴³ See EU Current Practices at 53.

¹⁴⁴ See EU Current Practices at 53.

¹⁴⁵ See EU Current Practices at 53.

individuals and identification number of the data recorded. DNA profiles can be exchanged with the other EU Member States through Interpol. As Germany has signed and ratified the Convention of Prüm, it has automatic access to the database of its contracting partners.¹⁴⁶

BS 2000 is currently used. Adjustment to Oracle-data base is planned.

With the numbers via special search algorithms. Only entirely matching hits are offered at the moment. The offering of hits with a certain “fault tolerance” is foreseen for the Oracle data base.

¹⁴⁶ See EU Current Practices at 53.

Hungary

Act LXXXV of 1999 on the Criminal Records and Certificates on Criminal Record.^{147,148}

Persons convicted of one of the crime categories which are listed in law, suspects charged with an offence that could lead to a prison sentence of 5 years or more or that is listed in law, and all crime scene stains¹⁴⁹

DNA profiles of crime suspects are retained when they are possibly involved in a crime which could result in a prison sentence of at least five years or when they are possibly involved in one of the offences which are listed in the law (e.g., offences related to international criminal activity, violent offences against sexual morals, offences committed against children under fourteen years old, offences committed in series or organized form, etc.). The DNA profiles of convicted offenders are retained upon conviction for one of the above mentioned crime categories. There are no restrictions to the entry of DNA profiles which are derived from unidentified crime scene stains.

A DNA sample can be taken from crime suspects, convicted offenders, minors and mentally ill persons. There are no restrictions to the collection of unidentified crime scene stains.

Convicted persons' profiles are kept until twenty years after conviction, suspects' profiles are retained until the underlying proceeding is abandoned or the individual is acquitted, and crime scene stains are deleted at the time proscribed by law¹⁵⁰

DNA profiles which are derived from unidentified crime scene stains are removed from the database when the prescription term for the related crime is reached. DNA profiles of crime suspects must be removed upon abandonment of the proceedings or upon acquittal. Convicted offenders' DNA profiles must be removed twenty years after the passing of the sentence.

¹⁴⁷ E.U. 9445/1/06 at 7.

¹⁴⁸ The database contains data for individuals who have been suspected of committing any crime belonging to the following crime categories: (1) punishable with five or more years of imprisonment, (2) related to international criminal activity, (3) sexual assault with violence, (4) against juveniles, (5) committed in series or in organized form, (6) related to drugs or substances qualifying as drugs, (7) related to money or securities forgery, (8) committed with arms, (9) crimes against the nation, terrorism, violation of international legal liabilities, abuse of nuclear energy, money laundering, crimes committed at service forces and preparation for terrorist activity. The database contains data for crime scene stains.

¹⁴⁹ See EU Current Practices at 56-57.

¹⁵⁰ See EU Current Practices at 57.

Convicted persons samples must be destroyed twenty years after their conviction and suspects' samples must be destroyed upon their acquittal or abandonment of the underlying investigation or proceeding¹⁵¹

All regulations regarding the entry and removal of the DNA profiles are also valid for the DNA samples from which they were derived.

Central Bureau for Data Processing, Recording and Election of the Ministry of Interior in co-operation with the Institute for Forensic Sciences of the Ministry of Interior.

Domestic courts, the public prosecutor's office, investigating authorities and national security services have full access rights to the information on the database. The International Law-enforcement Cooperation Centre and other bodies of the Republic of Hungary that are authorized by international conventions to process and disclose data to foreign bodies have access to the information on the database too. Citizens shall be informed, at their request, of the data held and processed in the database related to them. Database administrators have access to the information that is relevant for the execution of their duties. DNA profiles can be exchanged with the other EU Member States through Interpol.

It is a CODIS database (v 5.7).

It is under development.

¹⁵¹ See EU Current Practices at 57.

I. Law on Point

Law on Police DNA File¹⁵²

Police DNA File Regulations¹⁵³

II. Entry Criteria

The National Commissioner of Police maintains the two DNA databases: the Identification Database and the Trace Database. The two Databases are strictly separated.¹⁵⁴ The Trace Database contains genetic profiles that have been found at crime scenes from unidentified individuals potentially connected with the crime.¹⁵⁵ The Identification Database contains DNA profiles of persons that (A) have been convicted of violating the provisions of Chapter X, Chapter XI, Article 108, Article 164-166, Article 170-171, Articles 194-196, paragraphs 1 and 2 of Article 200, Article 201-202, Article 211, paragraph 2 of Article 218, paragraph 1 of Article 220 and Article 252 of the Criminal Code. The same applies for attempt and conspiracy counts of these crimes.¹⁵⁶ or (B) Have been cleared of charges of the provisions listed in section a, including attempt and conspiracy, for reasons of lack of mental capacity or have been judged as warranting a precautionary security order under section VII of the Criminal Code.¹⁵⁷

The Trace Database contains genetic profiles that have been found at crime scenes from unidentified individuals potentially connected with the crime. These profiles ought only be included on the Trace Database if there is reason to believe that they belong to someone connected to the offence under investigation.¹⁵⁸ The National Commissioner of Police oversees when DNA profiles are to be entered onto the Trace Database. Such profiles ought to be entered immediately after the underlying genetic analysis is complete.¹⁵⁹

¹⁵² Lög um erfðæfnisskrá lögreglu [Law on Police DNA File], Law No. 88 of 31 May 2001.

¹⁵³ Reglugerð um erfðæfnisskrá lögreglu [Police DNA File Regulations], No. 748/2008.

¹⁵⁴ Reglugerð um erfðæfnisskrá lögreglu [Police DNA File Regulations], No. 748/2008, Art. 1 (hereinafter Iceland DNA Regulations).

¹⁵⁵ Iceland DNA Regulations, Art. 1

¹⁵⁶ Iceland DNA Regulations, Art. 2.

¹⁵⁷ Iceland DNA Regulations, Art. 2.

¹⁵⁸ Iceland DNA Regulations, Art. 3.

¹⁵⁹ Iceland DNA Regulations, Art. 3.

DNA profiles on the Identification database may only be used in the criminal proceeding for which they were created unless there is an immediate need and the exception make special use of the database, i.e. in cases involving heinous crime. Whether or not an exception is to be granted therefore ought to consider the public views of the privacy interests at stake.¹⁶⁰ Upon final conviction, an individual's DNA profile shall be promptly entered into the Identification database.¹⁶¹ It is permissible to search between the Trace and Identification databases in the hopes of finding a match.¹⁶² The DNA profiles of known persons that have been loaded on neither database are not to be compared with profiles in the Traces Database. In the event that there exists reasonable suspicion that an individual has committed a violation under Article 3 of these Regulations, their DNA profile may then be compared to the Trace Database on these independent grounds.¹⁶³

III. Sample Collection

The National Commissioner of the Police is Responsible for entering DNA profiles onto both DNA databases, and is ultimately responsible for the proficient functioning of the same.¹⁶⁴ The National Commissioner of Police shall provide material and equipment to the police for conducting proper forensic investigations, as well as promulgating sufficient regulations and procedures to govern said investigations.¹⁶⁵ It is the responsibility of the National Commissioner of Police to compare DNA profiles among the DNA databases, as well as to consult expert opinion in the event of any ambiguity as to a match or exclusion.¹⁶⁶

It is the role of the police to conduct forensic crime scene investigations, including the collection of biological samples pursuant to Article 3 of these Regulations. The police are ultimately responsible for recording all necessary information associated with any biological samples collected as well as ensuring the chain of custody is maintained in accordance with the relevant regulations.¹⁶⁷ The Ministry of Justice may enter into service contracts whereby third-

¹⁶⁰ Iceland DNA Regulations, Art. 2.

¹⁶¹ Iceland DNA Regulations, Art. 2.

¹⁶² Iceland DNA Regulations, Art. 4.

¹⁶³ Iceland DNA Regulations, Art. 4.

¹⁶⁴ Iceland DNA Regulations, Art. 5.

¹⁶⁵ Iceland DNA Regulations, Art. 5.

¹⁶⁶ Iceland DNA Regulations, Art. 5.

¹⁶⁷ Iceland DNA Regulations, Art. 5.

party genetics laboratories are engaged to perform the genetic analysis necessary to derive DNA profiles from biological material.¹⁶⁸

IV. Removal Criteria

When a person's profile has been entered onto the Identification Database, it is incumbent upon the National Commissioner of Police to inform said person of this fact and provide an adequate explanation as to why this action has been taken. Any person has the right to petition the government to determine if their genetic information is contained on either of the databases at any time.¹⁶⁹ Any person who believes that their DNA profile has been included on one of the two databases by mistake, or that their database entry contains false or otherwise misleading information is free to petition the court for redress pursuant to the General Administrative Rules.¹⁷⁰

DNA profiles in the Identification Database must be deleted not later than two years after the National Commissioner of Police has been made aware of the death of the individual's passing. In the event that an individual's DNA profile was lawfully included in the Identification Database but that individual is later acquitted or otherwise cleared of all charges, his profile must be deleted as soon as is possible in the circumstances but in not cases later than six months from said acquittal. In the event that it has become clear that an individual's profile was entered onto the database incorrectly, it must be removed as soon as is possible in the circumstances. Finally, an individual's genetic profile must be removed from the database when that person has been adequately identified and excluded from suspicion or upon the expiration of the allotted time for the criminal proceeding in question.¹⁷¹

V. Sample Retention

The laboratories that conduct genetic analyses under contract with the Ministry of Justice possess the biological samples during said analysis. Biological samples taken from known individuals must be destroyed upon derivation of a genetic profile therefrom. In the case of

¹⁶⁸ Iceland DNA Regulations, Art. 5.

¹⁶⁹ Iceland DNA Regulations, Art. 6.

¹⁷⁰ Iceland DNA Regulations, Art. 6.

¹⁷¹ Iceland DNA Regulations, Art. 8.

unidentified biological samples where there exists reason to believe they are linked with past criminal activity, they may be retained for as long as is necessary for investigation.¹⁷²

VI. Database Access

Without the express permission of the National Commissioner of Police, given only at the consent of the Minister of Justice, no person may have access to the information contained on either of the DNA databases.¹⁷³

In the usual course of criminal proceedings, access to the database may be extended to the police, the state prosecutor, the Ministry of Justice, any competent foreign court or judicial authority for good cause, and any laboratory responsible for conducting genetic analysis—including those nongovernmental laboratories under contract to the Ministry of Justice to perform this function.¹⁷⁴

¹⁷² Iceland DNA Regulations, Art. 9.

¹⁷³ Iceland DNA Regulations, Art. 7.

¹⁷⁴ Iceland DNA Regulations, Art. 7.

2005 Amendment to the Criminal Procedure Law¹⁷⁵

¹⁷⁵ Criminal Procedure (Enforcement of Powers) 2010 Amendments

I. Law on Point

DNA Handling and Recording Regulations¹⁷⁶

Police Instructions on DNA¹⁷⁷

There are no special rules of evidence for the admissibility of DNA test results. The general rule for the admissibility of scientific evidence applies in the same way. This rule is not statutory but based on judicial precedent. It consists of two judgment factors. One is that the scientific test concerned has a general reliability, and the other is that the test was carried out properly in the case in question. The latter means that the collection, storage and testing of samples must be properly conducted.

There is only one case in which the Supreme Court has decided on the admissibility of DNA test results.¹⁷⁸ The Court ruled in a murder case that the result of a NICT115 type DNA test conducted by the police was admissible, because the scientific principle of the MCT118 type test has theoretical accuracy, and the test in this case was conducted in a scientifically exact way by a person who possessed the requisite skills for conducting the test. This decision was basically based on the above general rule.

Besides this, some courts have referred to the possibility of a second testing of samples in judging the admissibility of DNA test results. However, the Supreme Court had not found that it should be a requirement in determining admissibility.

Defense lawyers usually challenge DNA evidence by insisting that it does not meet the above-mentioned requirements for the admissibility of scientific evidence. There is one case in which the admissibility of the DNA test result was denied on the ground that the storage and test of the sample, which was hair in this case, had been improper.¹⁷⁹

The courts have found in several cases that DNA test results could be an important piece of evidence in establishing a person's guilt, but there still has been no case in which the defendant was found guilty based only on DNA test results. Rather, the courts evaluate DNA test results together with other evidence, or use them as corroborative evidence. In the above-mentioned case, the Supreme Court pointed out that the credibility of the DNA test results should be checked cautiously. In this sense, Japan's courts are still prudent in judging the evidentiary value of DNA test results.

II. Entry Criteria

¹⁷⁶ DNA型記録取扱規則 [DNA Handling and Recording Regulations], National Public Safety Commission Regulation No. 50 of 2005.

¹⁷⁷ DNA型記録取扱細則 [Detailed Rules for DNA Handling and Recording], Police Instruction No. 8 of 26 August 2005.

¹⁷⁸ Saiko-Saibansho Keiji-Hanreishu, vol 54 No 6, 17 July 2000, 550.

¹⁷⁹ Hanrei-Jihou, No 1543, 30 June 1995, 181 (Fukuoka Appellate Court).

Under Japanese law, DNA samples may be taken and tested when the investigation starts. In order for these procedures to take place it is not necessary that either the suspect be arrested, or that criminal charges be filed.

III. Sample Collection

The formalities required in relation to the collection of samples will vary depending on the manner the collection of samples takes. On the one hand, when it is conducted on a compulsory basis, for example, a blood sample from a suspect is taken against his will, a warrant issued by a judge is necessary without exception. On the other hand, when it is conducted on a non-compulsory basis, for example, when the police collect the hairs of a suspect from a garbage can put out by that suspect, no warrant is necessary.

Generally speaking, force that is necessary and reasonable in order to enforce the warrant may be used. For example, if the suspect resists the taking of his or her blood sample, the police can hold his or her body down to suppress resistance and restrain him or her forcibly.

According to Japanese law, there is no differentiation between persons in relation to the collection of samples. In effect, therefore, the same rules apply to all people who are suspects.

VI. Sample Retention

Japan has a statute dealing with the retention of records of criminal trials (the Finalized Criminal Suit Document Law 1987). This law provides the period for which records of criminal trials must be retained. DNA test results, which usually appear as written expert opinion, must also be retained under this law when they were presented as evidence at trial. The period of retention is from three to 50 years, according to the seriousness of the crime in question. The Public Prosecutor's Office is responsible for their retention.

This law does not apply to DNA samples and test results that were not presented at trial. The internal regulation of the Public Prosecutor's Office provides the period for which they are to be stored. On the other hand, there are no statutory rules that provide for when samples and test results must be destroyed. However, in the internal guidelines of the police for the practice of DNA tests, the rest of blood samples taken on a warrant must be destroyed after the test has been completed. Thus, the Public Prosecutor's Office and the police can retain and store other samples and DNA test results.

VI. Sample Retention

When DNA test results are objects of the above-mentioned Finalized Criminal Suit Document Law, they can be released to everyone, with some exceptions. The release of other DNA test results depends upon who requests them. When other investigation authorities request them, the results are released, because all public offices are obligated to co-operate with an investigation (Article 197(1), Code of Criminal Procedure). On the other hand, when other government authorities or private citizens request them, they will not be released because of the duty to protect secrets.

I. Law on Point

Law on establishing and usage of the National DNA database (adopted on July 7, 2004, and entered into force on January 1, 2005).^{180,181}

II. Entry Criteria

Convicted or suspected of any recordable offence and all crime scene stains¹⁸²

There are no restrictions to the entry of DNA profiles which are derived from unidentified crime scene stains. The DNA profiles of crime suspects and convicted offenders can be entered into the database when they are suspected or convicted of any recordable offence.

III. Sample Collection

The police have the authority to coercively take a DNA sample from crime suspects and convicted offenders. There are no restrictions to the collection of DNA samples which are found at crime scenes. The police are allowed to take a DNA sample from minors and mentally ill persons.

IV. Removal Criteria

Convicted persons' and suspects' profiles are retained for seventy five years after their entry and crime scene samples are kept until they are identified¹⁸³

The DNA profiles of crime suspects are stored in the database for seventy-five years. This provision is also valid for crime suspects who are acquitted. Convicted offenders' DNA profiles are also stored for 75 years. The DNA profiles which are derived from unidentified crime scene stains are stored in the database until they are identified.

V. Sample Retention

¹⁸⁰ E.U. 9445/1/06 at 7.

¹⁸¹ **[CHECK STATUS]** The following Draft Regulations of the Cabinet of Ministers are prepared and waiting for approval: (1) Regulation on procedures for submitting information to the DNA data base and collecting of DNA samples; (2) Regulation on procedure for submitting to the DNA data base and registration of information on relatives of missing persons; (3) Regulation on procedure for obtaining information from the DNA database.

¹⁸² See EU Current Practices at 61.

¹⁸³ See EU Current Practices at 61.

All samples are kept for seventy five years¹⁸⁴

All regulations regarding the entry and removal of DNA profiles are also valid for the DNA samples from which they were derived.

VI. Database Access

Information Centre of the Ministry of the Interior responsible for technical operation (hardware) and is a holder of technical resources (servers etc.) and State Police Forensic Service Department which holds the DNA data base and all information kept in it (user).

Only members of the State Police Forensic Service Department have full access rights to the information that is stored in the database. Others, such as law enforcement officials with permission from a prosecutor and judicial authorities, can submit a written request for information. Online access to the database is only possible from within Forensic Service Department. Requests for the international exchange of DNA profiles must pass through the State Police International Cooperation Department.

It is planned to obtain CODIS system

As the DNA data base is not functioning yet the answer cannot be given.

¹⁸⁴ See EU Current Practices at 61.

I. Law on Point

Art. 156 of the Criminal Procedure Code of the Republic of Lithuania provides the legal basis to carry out genetic fingerprinting of individuals.

Lithuanian Police Activity Law provides the legal basis to accumulate and maintain various forensic intelligence databases.

Instructions on DNA Database Management, approved by the Order of the General Commissar of the Lithuanian Police and agreed with the Director of the Forensic Medicine Institute of the M. Romeris University¹⁸⁵

II. Entry Criteria

All convicted persons, suspects, and crime scene stains¹⁸⁶

There are no restrictions to the entry of DNA profiles of crime suspects, convicted offenders and unidentified crime scene stains into the database.

III. Sample Collection

There are no restrictions to the collection of DNA samples from crime suspects and unidentified crime scene stains. Lithuanian police officers and officers from the Prison department of the Ministry of Justice of the Republic of Lithuania are not allowed take a DNA sample from convicted offenders. However, if a convicted offender is suspected of having committed any other recordable offence, an officer of the criminal or the local police is allowed to take a DNA sample from the convicted offender. The police are not allowed to take a DNA sample from mentally ill persons.

IV. Removal Criteria

Convicted persons' and suspects profiles are retained for one hundred years after their entry or ten years after their death and crime scene stains are kept indefinitely¹⁸⁷

¹⁸⁵ E.U. 9445/1/06 at 7.

¹⁸⁶ See EU Current Practices at 64.

¹⁸⁷ See EU Current Practices at 64.

No time limit has been established for the retention of DNA profiles which are derived from unidentified crime scene stains. The DNA profiles of crime suspects and convicted offenders are removed after hundred years after entry or ten years after the passing away of the individual.

V. Sample Retention

All samples must be destroyed once they have been analyzed and a DNA profile derived therefrom¹⁸⁸

DNA samples of crime suspects and convicted offenders must be destroyed immediately after they have been analyzed and the related DNA profiles have been stored into the database.

VI. Database Access

Authorized database managers and scientists have access to all information contained in the DNA database. Police officers can only check whether a particular person's profile is included into the DNA database. DNA profiles can be exchanged with other EU Member States through Interpol.

¹⁸⁸ See EU Current Practices at 64.

I. Law on Point

Law No. 163 of August 25, 2006 on the Procedures for Identification by DNA Fingerprints in Criminal Cases^{189,190}

II. Entry Criteria

Persons convicted of an offence that is listed in law (order of solicitor or examining magistrate is required), persons suspected of any recordable offence (order of solicitor or examining magistrate is required) and crime scene stains only by order of the solicitor, the examining magistrate or a judicial police officer acting by order of one these magistrates¹⁹¹

The DNA profiles of a crime suspects can be entered into the database when they are suspected of any recordable offence. However, an order of the prosecutor or the examining magistrate is required.¹⁹² The DNA profiles of convicted offenders can be entered into the database when they are sentenced to imprisonment for one of the crimes listed in the law.¹⁹³ The list includes offences like terrorism, murder, the taking of hostages, torture and some forms of theft.¹⁹⁴ This can also only be done by order of the solicitor or the examining magistrate. DNA profiles which are derived from unidentified crime scene stains can be entered into the database by order of the prosecutor, the examining magistrate or a judicial police officer acting by order of one these magistrates.¹⁹⁵

III. Sample Collection

Only the solicitor and the examining magistrate have the authority to order the taking of a DNA sample from a person in order to create a DNA profile.¹⁹⁶ With regard to unidentified DNA

¹⁸⁹ Law No. 163 of August 25, 2006, Recueil de Legislation, September 8, 2006, p. 2984 (lux.)

¹⁹⁰ E.U. 9445/1/06 at 7.

¹⁹¹ See EU Current Practices at 66.

¹⁹² Law of 25 August 2006 regarding the identification procedure by DNA analysis in penal matters, art. 6.

¹⁹³ Id. at Art. 8.

¹⁹⁴ Code of criminal procedure, art. 48-7.

¹⁹⁵ Law of 25 August 2006 regarding the identification procedure by DNA analysis in penal matters, art. 6.

¹⁹⁶ Code of criminal procedure, art. 48-3.

stains that are discovered at a crime scene, this may only be done in the course of a criminal investigation.¹⁹⁷ The taking of a DNA sample from a person is performed by means of a buccal swab, the collection of hair shafts or by blood sampling.¹⁹⁸ When the person concerned consents to the collection of a sample, he may choose by which method the sample is collected.¹⁹⁹ If he refuses to cede a sample, coercive sampling is allowed when there are sufficient indications that he is directly involved in a criminal offence that is punishable by a jail sentence of two years or more.²⁰⁰ In that case, sampling is performed by either the taking of hair shafts or a buccal swab. If the person concerned has not yet reached the age of fourteen years, written consent of his legal guardian is required in order to collect a sample. Consent of the legal guardian is also required for the taking of a DNA sample from mentally-ill persons.

IV. Removal Criteria

Convicted persons' profiles are kept for ten years after their death, suspects' profiles are deleted upon their acquittal or ten years after their death, and crime scene stains are retained for thirty years after their entry²⁰¹

The DNA profiles of crime suspects have to be removed from the database when the person concerned is acquitted or when the prescription term is reached.²⁰² When the person concerned passes away, his DNA profile must be removed ten years following this occurrence. The DNA profiles of convicted offenders have to be removed from the database ten years after the passing away of the person concerned.²⁰³ The DNA profiles that are derived from unidentified crime scene stains have to be removed from the database thirty years after their entry.

V. Sample Retention

¹⁹⁷ Id. at Art. 48-3.

¹⁹⁸ Id. at Art. 48-4.

¹⁹⁹ Id. at Art. 48-5

²⁰⁰ Id.

²⁰¹ See EU Current Practices at 66-67.

²⁰² Id. at Art. 7.

²⁰³ Id. at Art. 10.

Convicted persons' samples are destroyed ten years after their death; suspects' samples are destroyed upon acquittal, ten years after their death, or upon the expiration of the a term prescribed by law²⁰⁴

All regulations regarding the entry and removal of DNA profiles are also valid for the DNA samples from which they were derived.²⁰⁵

VI. Database Access

Only members of the DNA unit have access to the database. Magistrates have to submit a request for information to this unit. DNA unit members have access to all the information contained in the database. Every action in the database is logged.²⁰⁶ DNA profile information is exchanged via Interpol, Europol and rogatory letters. Luxemburg has signed and ratified the Convention of Prüm which makes it possible to automatically access the forensic DNA databases of the other contracting parties.

Own development under way: SQL Server 2005 based with Windows clients.

Matching and interrogation tool with special search algorithms.

²⁰⁴ See EU Current Practices at 67.

²⁰⁵ See EU Current Practices at 66-67.

²⁰⁶ See EU Current Practices at 66-67.

I. Law on Point

The Deoxyribonucleic Acid (DNA) Identification Act of 2009²⁰⁷ establishes the “Forensic DNA Databank Malaysia.”²⁰⁸ The DNA Databank is under the management of the Head of DNA Databank.²⁰⁹

II. Entry Criteria

Malaysian law states that the primary objective of the DNA Databank is for the purpose of human identification in relation to forensic investigation.²¹⁰ However, it is lawful to utilize the DNA profiles and any information in relation thereto kept in the DNA database for the purpose of identifying any “living or deceased person[.]”²¹¹

The Forensic DNA Databank Malaysia consists of six indices: (1) a crime scene index, (2) a suspected persons index, (3) a convicted offenders index, (4) a detainee index, (5) a drug dependants index, (6) a missing persons index, and (7) a voluntary index. The a crime scene index contains DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample that is found on anything or at any place where an offence was committed, on or within the body of a victim of an offence, on anything worn or carried by the victim of an offence at the time when the offence was committed, or on or within the body of any person reasonably suspected of having committed an offence.²¹² The suspected persons index contains DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from persons reasonably suspected of having committed an offence and includes suspects who have not been charged in any court for any offence.²¹³ The convicted offenders index contains DNA profiles and any information in relation thereto derived

²⁰⁷ Deoxyribonucleic Acid (DNA) Identification Act of 2009, Malaysian Government Gazette of September 3, 2009, Malaysia Act 699.1 *et seq.* (LEXIS) (hereinafter “Act 699”).

²⁰⁸ Act 699, § 3(1)

²⁰⁹ Act 699, § 3(2)

²¹⁰ Act 699, § 4(1)

²¹¹ Act 699, § 4(2)(b)

²¹² Act 699, § 3(3)(a)

²¹³ Act 699, § 3(3)(b)

from an intimate sample or a non-intimate sample taken from persons convicted of any offence under any written law.²¹⁴

The detainee index contains DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a detainee.²¹⁵ The drug dependants index contains DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a drug dependant.²¹⁶ The missing persons index contains DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from the body or parts of the body of an unidentified deceased person, anything worn or carried by a missing person or the next of kin of a missing person if so required.²¹⁷ Finally, the voluntary index contains DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a person who volunteers to submit the same for the purpose of storage of the DNA information in the DNA Databank.²¹⁸

Any existing DNA profile and any information in relation thereto kept and maintained by the Chemistry Department of Malaysia or Royal Malaysia Police, immediately before the coming into operation of this Act shall, on the coming into operation of this Act, be deemed to have been kept and maintained in and to form part of the DNA Databank established under this Act in accordance with indices applying.²¹⁹

III. Sample Collection

An intimate sample of a person reasonably suspected of having committed an offence, a detainee²²⁰, or a drug dependant²²¹, may be taken for forensic DNA analysis only if an officer

²¹⁴ Act 699, § 3(3)(c)

²¹⁵ Act 699, § 3(3)(d)

²¹⁶ Act 699, § 3(3)(e)

²¹⁷ Act 699, § 3(3)(f)

²¹⁸ Act 699, § 3(3)(g)

²¹⁹ Act 699, § 25

²²⁰ Malaysian law defines detainee as any “person arrested and detained under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 [Ord. 5/1969] or the Dangerous Drugs (Special Preventive Measures) Act 1985 [Act 316].” See Act 699, § 2.

²²¹ Malaysian law defines a drug dependent as any “person who is subject to such order or decision made pursuant to the Drug Dependents (Treatment and Rehabilitation) Act 1983 [Act 283].” See Act 699, § 2.

authorizes it to be taken and an the appropriate consent²²² is given by the person from whom an intimate sample is to be taken.²²³ Malaysian law defines an intimate sample as “(a) a sample of blood, semen or any other tissue or fluid taken from a person’s body, urine or pubic hair; or (b) a swab taken from any part of a person’s genitals (including pubic hair) or from a person's body orifice other than the mouth.”²²⁴ What’s more, an “offense” includes “any act or omission punishable by any law.”²²⁵ A non-intimate sample of a person reasonably suspected of having committed an offence; a detainee, or a drug dependant, may be taken only if an authorized officer authorizes it to be taken. Unlike the case of intimate samples, there is no consent requirement for the taking of a non-intimate sample.²²⁶

Subject to an appropriate consent being given when required, an authorized officer shall only give his authorization if he has reasonable grounds for suspecting that the person from whom the intimate sample is to be taken has committed an offence and believing that the sample will tend to confirm or disprove the commission of the offence by that person, an arrest has been effected on or a detention order has been made against a detainee, or an order or a decision has been made pursuant to the Drug Dependents (Treatment and Rehabilitation) Act 1983 against a drug dependant.²²⁷ An authorized officer shall give his authorization under subsection in writing, or where it is impracticable to do so, may give such authorization orally, in which case he must confirm it in writing as soon as may be possible.²²⁸ If a person from whom a non-intimate sample is to be taken under this Act refuses to give the sample or refuses to allow the sample to be taken from him without good cause or the sample cannot be obtained despite all reasonable efforts taken, that person may be taken before a magistrate and the magistrate may, if

²²² Malaysian law defines appropriate consent “(a) in relation to a person who is under the age of eighteen years, the consent in writing of his parent or guardian; (b) in relation to a person who has attained the age of eighteen years, the consent in writing of that person; or (c) in relation to a person in whom there is a condition of arrested or incomplete development of mind or body whether such condition arises from inherent causes or is induced by disease or injury and who is incapable of understanding the general nature and effect of a forensic DNA analysis or is incapable of indicating whether he consents or does not consent to give his intimate sample or non-intimate sample, the consent in writing of his parent or guardian.” See Act 699, § 2.

²²³ Act 699, § 12(2)

²²⁴ Act 699, § 2

²²⁵ Act 699, § 2

²²⁶ Act 699, § 13(2)

²²⁷ Act 699, § 12(3)

²²⁸ Act 699, § 12(4)

satisfied that there is reasonable cause to believe that the sample tends to prove or disprove the commission of an offence by that person, order that person to provide his non-intimate sample.²²⁹ The law is silent on what would constitute “good cause” for refusing consent.

Furthermore, an intimate sample or a non-intimate sample may be taken for forensic DNA analysis from any person who is serving his term of imprisonment in connection with an offence of which he has been convicted. The law is silent on the issue of consent, and thus it is likely not required in this case.²³⁰

IV. Removal Criteria

Where an intimate sample or a non-intimate sample has been taken in accordance with this Act from a person reasonably suspected of having committed an offence and investigations reveal that he was not involved in the commission of any offence, the charge against him in respect of any offence is withdrawn, he is discharged by a court of an offence with which he has been charged, at trial or on appeal, he is acquitted of an offence with which he has been charged, at trial or on appeal, or he is not charged in any court for any offence within a period of one year from the date of taking of such sample from him, the Head of DNA Databank shall, within six months of so being notified by the Officer in Charge of a Police District of the fact, remove the DNA profile and any information in relation thereto of such person from the DNA Databank.²³¹

V. Sample Retention

The Head of DNA Databank shall safely and securely store all intimate samples and non-intimate samples that are collected for the purpose of forensic DNA analysis, the portions of the samples that the Head of DNA Databank consider appropriate and without delay destroy any remaining portions.²³²

VI. Database Access

²²⁹ Act 699, § 13 (7)

²³⁰ Act 699, § 15

²³¹ Act 699, § 17(a) to (d)

²³² Act 699, § 16

Genetic profiles stored in the DNA database are derived by analysis carried out by the Chemistry Department of Malaysia or Forensic Laboratory of the Royal Malaysia Police.²³³ Access to, a communication about or use of DNA profiles or any information in relation thereto stored in the DNA Databank is limited to the Head of DNA Databank, Deputy Head of DNA Databank DNA Databank officers or any chemist. Moreover, the law prescribes that such use shall only for the purposes of forensic comparison with any other DNA profiles or information in the course of an investigation of any offence conducted by any enforcement agency, administering the DNA Databank; or making the information available to the person to whom the information relates.²³⁴

²³³ Act 699, § 5

²³⁴ Act 699, § 11(1)(a) to (1)(c)

I. Law on Point

The national code of criminal proceedings stipulates that by means of a national administrative order the handling of DNA-profiles and organic cell material can be regulated. These rules are laid down in the DNA-investigation in Criminal Proceedings Act. Its Article 14 (1) provides for the legal basis for the DNA database.²³⁵

II. Entry Criteria

Persons convicted or suspected of any recordable offence and all crime scene stains²³⁶

DNA profiles of crime suspects can only be entered into the database when they are suspected of a crime that can lead to provisional detention or by order of an investigation judge or prosecutor.²³⁷ According to the law of 2 February 2005, the creation of DNA profiles from samples taken from convicted offenders is only permitted when they are convicted of a crime that can lead to provisional detention.²³⁸ This provision is retroactively valid for those who were convicted before 2 February 2005 and for those who have not been incarnated yet.²³⁹ There are no conditions for the entry of the DNA profiles that are derived from unidentified crime scene stains.²⁴⁰

III. Sample Collection

Police officers are allowed to collect all crime scene DNA stains that possibly belong to a criminal offender. However, they are not authorized to order a DNA analysis of these DNA samples. This power only comes to the officer of justice and the judge-commissioner.²⁴¹ The officer of justice can order the coercive sampling of a crime suspect when there are serious

²³⁵ E.U. 9445/1/06 at 7.

²³⁶ See EU Current Practices at 71.

²³⁷ Law on DNA investigation in criminal proceedings, §4, Art. 14(4)(a).

²³⁸ Id., §4, Art. 14(4)(d).

²³⁹ Law on DNA investigation of convicts, Art. 8, §1.

²⁴⁰ Law on DNA investigation in criminal proceedings, §4, Art. 14(4)(b).

²⁴¹ Act on criminal proceedings, art. 195a, §1.

indications that he is involved in an offence that can lead to provisional detention.²⁴² Crime suspects also have the opportunity to voluntarily cede a DNA sample.²⁴³ In that case, a written request will be sent to the suspect to which he can consent or not. He has the right to be assisted by an attorney when taking a decision. When the suspect consents, the suspect can choose whether sampling is performed by taking cheek adhesive, blood or hair shafts. Sampling is normally performed by a doctor or a nurse. Upon the suspects' consent, sampling can also be performed by an investigation officer. In that case, the investigation officer is only allowed to take cheek adhesive or hair shafts. According to the law of 2 February 2005, coercive harvesting of a tissue sample is allowed for offenders who are convicted of a crime that, according to law, can lead to provisional detention.²⁴⁴ This law applies to all individuals who are convicted after 2 February 2005 and to those individuals who were convicted before this date, but at that time have not sat out their full sentence or have not been incarcerated yet. An appeal can be made against the creation of a profile from this sample in the DNA database, but not against the collecting itself. The Dutch DNA law does not provide for a different treatment of minors and mentally ill persons.²⁴⁵

IV. Removal Criteria

Convicted persons' profiles are kept for one hundred years after the individual's date of birth, suspects' profiles are removed upon their acquittal, and crime scene stains are removed when no longer considered useful²⁴⁶

DNA profiles which are derived from unidentified crime scene stains are removed from the database after twelve, twenty or eighty years, depending on the seriousness of the offence.²⁴⁷ The DNA profiles of crime suspects and convicted offenders are removed from the database thirty years after entry when the suspicion, respectively conviction relates to a crime which can result in a prison sentence of maximum 6 years or more and twenty years when it concerns a crime

²⁴² Id., art. 151b, §1.

²⁴³ Law on DNA investigation in criminal proceedings, §2, Art. 2(1) to (9).

²⁴⁴ Law on DNA investigation of convicts, art. 2, §1.

²⁴⁵ See EU Current Practices at 71-72.

²⁴⁶ See EU Current Practices at 71-72.

²⁴⁷ Law on DNA Investigations in Criminal Proceedings §4, Art. 18(7).

which can result in a prison sentence of less than six years, or twenty years after the decease of the individual.²⁴⁸ This period can be extended for another twenty or thirty years when the crime suspect or convicted offender is peremptory convicted for another offence. The DNA profiles of crime suspects who are acquitted have to be removed as soon as the public prosecution office has informed the NFI that the individual is no longer considered a suspect.²⁴⁹

V. Sample Retention

Convicted persons' samples are retained indefinitely; suspects samples must be destroyed upon their acquittal²⁵⁰

All regulations regarding the entry and removal of DNA profiles are also valid for the DNA samples from which they were derived.²⁵¹

The DNA DB is managed, on behalf of the Minister of Justice by the Director of the National Forensic Institute (NFI).²⁵²

VI. Database Access

Only authorized personnel of the NFI have access rights to the DNA database and the register that contains the matching personal data of the suspects and convicted offenders whose profile is entered into the database. The NFI are only allowed to provide relevant data to judiciary officials, police officials and officials of the Central Judicial Collection Agency in as far as they use it for the tasks that are listed in the law.²⁵³ The NFI may only provide information from the DNA database to police officials when this it is related to an unsolved case. This information must be limited to the name, birth date, and birth place of the individual. This last restriction also applies to the Central Judicial Collection Agency.²⁵⁴ The NFI may only provide information to

²⁴⁸ Id., §4, Art. 18(1) to (3).

²⁴⁹ Id., §4, art. 16(1), 16(2).

²⁵⁰ See EU Current Practices at 72.

²⁵¹ Law on DNA Investigations in Criminal Proceedings §4, Art. 18(10).

²⁵² The latter oversees the destruction of DNA-profiles and organic material within the period foreseen by law. He is not responsible however for assessing the lawfulness of the supply of organic (cell) material and the profiles obtained on the basis of that material. This responsibility remains with the authority that ordered the DNA investigation, i.e. public prosecutor or the "juge d'instruction."

²⁵³ Law on DNA Investigations in Criminal Proceedings §4, Art. 15(2)a to e.

²⁵⁴ Id. at §4, Art. 15(3) to 5.

the various authorized persons upon their written request and is obliged to register the identity of the applicant, the nature of the submitted information, and date of the transfer.²⁵⁵ The Central Judicial Collection Agency is exempted from the obligation to submit a written request. They can consult the information electronically without authorization from the NFI. The CJCA can also authorize judiciary officials and police officials to consult the information electronically. In that case, the CJCA has to register the identity of the applicant and the date of the information transfer.²⁵⁶ The regulations regarding requests for legal assistance apply to the international exchange of DNA profiles.²⁵⁷ Written or electronic requests by foreign judicial authorities must therefore be submitted to a Dutch officer of justice. The Netherlands have signed and ratified the Convention of Prüm and therefore have automatic access to the forensic DNA databases of the other contracting parties.

CODIS is the application implemented by NFI. It has been built by SAIC on behalf of FBI. The DB is based on MS SQL-server.

The query algorithms are integrated in the applications. It is possible to configure the number of DNA-characteristics (loci) and matching characteristics (loci). It is also possible to categorize profiles allowing a targeted comparison, such as suspects with traces and with mixed traces

²⁵⁵ Id. at §4, Art. 15(6) to 7.

²⁵⁶ Id. at §4, Art. 15(5), 15(8).

²⁵⁷ See EU Current Practices at 71-72.

Criminal Investigations (Bodily Samples) Act of 1995²⁵⁸

Criminal Investigations (Bodily Samples) Amendment Act of 2003²⁵⁹

Criminal Investigations (Bodily Samples) Amendment Act 2009²⁶⁰

²⁵⁸ Put. Act. 1995 No. 55 (Oct. 24, 1995).

²⁵⁹ Pub. Act. 2003 No. 11 (Oct. 30, 2003).

²⁶⁰ Pub. Act. 2009 No. 46 (Nova. 2, 2009).

Criminal Procedures Act²⁶¹

Law Regulating the Prosecuting Authority²⁶²

Chapter 10²⁶³ of the Law Regulating the Prosecuting Authority governs physical examinations of suspects, while Chapter 11a²⁶⁴ regulates the National DNA database.

²⁶¹ Straffeprosessloven [strpl] [Criminal Procedures Act] 12:158, 12:160, 12:160a (Nor.).

²⁶² Chs. 10, 11a Forskrift om ordningen av påtalemyndigheten (påtaleinstruksen) [Law Regulating the Prosecuting Authority] ([Norsk Lovtidend] 1985:1679) (Nor.).

²⁶³ **Chap.10. Physical examination of suspects.**

§ 10-1. When the suspects can be subjected to physical examination

Physical examination may be made against the suspects with reasonable grounds for an action which by law can lead to freedom of punishment, when it is believed to be of importance for the enlightenment of the case and does not appear as a disproportionate interference. If the terms of consent in writing, can be obtained biological material with a view to conduct a DNA analysis without regard to whether there are reasonable grounds for suspicion.

This applies even if the punishment can not be imposed because of the provisions of Penal Code § 44 or § 46. It also applies when the state has meant that the suspect has not been expelled sake.

The provisions of this instruction makes no changes to the freedom to make purely external examination of the body and clothing, etc. under the rules of search warrants, see Criminal Procedure Law § § 192 et seq

0 Amended by regulations 5 September 1997 No. 961, October 24, 2003 No. 1261.

§ 10-2. Decision of the Court of physical examination

Without the suspect's consent to physical examination only made after the court ruling has given permission to the survey.

Prosecutors will decide whether the court's permission to physical examination of the suspects will be requested. The request shall contain a brief description of the action and the suspicion is the reason why the investigation must be assumed to be important for that information. Moreover, the petition shall specify what the investigation will go on.

Before it decides the physical examination of the suspects, they should be as far as possible and advisable access to express themselves.

§ 10-3. Decision by prosecutors on physical examination

If the purpose of the investigation would otherwise be forfeited, the prosecuting authority on their own give orders that will be conducted physical examination of suspects. To order comes into this case instead of ruling by the court.

The order shall be in writing and reasoned. It should specify what the investigation will go on. If the purpose of the investigation would otherwise be forfeited, the order is given orally, but shall in such case recorded as soon as possible.

The rules in § 10-2, third paragraph applies correspondingly.

§ 10-4. Restrictions on freedom of investigation etc.

Physical examination can only be made to the extent it can be done without danger or significant pain for the suspects. Do not make gastroscopy (stomach examination) or take a urine sample using a catheter.

Otherwise, the survey is always undertaken as regards fully as possible. It will be no more intrusive than is necessary, and should be performed on a minimal invasive manner.

There must be only used force in the extent and as long as is necessary to complete the survey in satisfactory manner. It can not force that involves danger or significant pain for the suspects.

§ 10-5. Who can make physical examination

The following investigations should only be performed by qualified health personnel, and preferably, when it can be done without the purpose of the survey forfeited, by a physician or by decree of the physician in each case:

- a) Blood Sampling

- b) Investigation using X-ray
- c) Examination of the rectum or vagina
- d) Study by enema or supply of emetic or purgative
- e) Other interventions that require medical know-how.

Study by enema or supply of emetic or purgative that is not performed by a physician, must only be undertaken under the supervision of a physician. Exploration of the use of rektoskop must only be undertaken by a doctor. In addition to physical examination, such as urine, utåndingsprøve (alcotest) and examination of the mouth, carried out by the police.

§ 10-6. The practical implementation of the survey

Prior to the survey conducted, the decision or order the physical examination read to or be displayed suspects. There is no written decision shall be stated what the issue is and what the survey should go on.

If the survey will only be present persons who are required by the terms of the implementation of the survey. The place has a duty to preserve secrecy to unauthorized use of what they have observed.

After consideration of decency dictate, they will present people as far as possible be of the same sex as suspect. This does not apply for health professionals taking part in the survey.

When the survey is made, it should if possible be present a witness who is not ugild under the rules of Court Act § 110, second paragraph.

Examination of more extensive or intimate nature can only be done indoors and in a separate room separated.

§ 10-7. A written statement of the survey

Experts who assist prosecutors, will provide a written statement about the investigation under the provisions of the Criminal Procedure Act § 153, third paragraph.

If the survey is conducted by the police, see § 10-5, last paragraph, should a similar written statement given by the competent police officer.

§ 10-8. Report

It will be on site or as soon as possible put up a report of physical examination that is conducted pursuant to the provisions of the Criminal Procedure Act § 157. The report should provide information about:

- a) Suspect's name, date of birth and residence, and what the suspicion is
- b) The court's ruling, any prosecution ordered the investigation
- c) Who has made the investigation and when it occurred
- d) What kind of investigation that was undertaken and the results of it, possibly by a reference to the written statement prepared in connection with the investigation.

The report shall be signed by the report printer, and in the case of the witness.

When the report comes to physical examination as specified in § 10-5 first paragraph b to e, shall be an extra copy of archived separately to use for reporting under § 10-9.

§ 10-9. Reporting etc.

At each turn of the year will be a copy of the reports mentioned in § 10-8, third paragraph sent to the Attorney General.

Prosecutor brings statistics of the different types of physical examinations as it enters report. Prosecutor submit every year the statistics of the Ministry of Justice with the notes he believes the matter had to front seats.

The Ministry may obtain further information about the police and prosecution's handling of cases where it has filed or made physical examinations - both generally and with respect to specific cases.

²⁶⁴ **Chapter 11a. Central register of DNA profiles** (The entire section was amended by regulation 8 August 2008 No. 883 (effective September 1, 2008)).

§ 11a-1. Central DNA register

At NCIS be a central DNA register that consists of an identity register, a register investigation and a trail register.

The DNA profile is meant in this chapter, the results of an analysis of biological material to determine a person's identity. The DNA profile is expressed by a number combination. Profiles detected in the DNA index is referred to as identity profiles, investigative profiles and track profiles.

The identity of the register can be registered

- a) it is imposed as a punishment for an act which by law can lead to freedom punishment. Registration can only occur when the decision is legally enforceable or the case is finally decided. Action that it is made out simplified procedures for, does not provide a basis for registration

- b) it can not be sentenced to punishment for an act that would qualify for registration because of the provisions of Penal Code § 44 or § 46 The same applies when the state has meant that they have not expelled the sake
- c) the working or living in Norway and has committed an act that could have led to freedom of punishment if it had been committed in Norway and abroad who are serving a penalty corresponding to those mentioned in the Penal Code § 15
- d) the requests for reasons that are comprehensive.

In the investigation register recorded all the DNA profiles obtained on the basis of biological material obtained pursuant to the Criminal Procedure Act § 158, first paragraph. Once the police have taken a decision on registration in the identity register, the person's DNA profile is transferred from investigations to register the identity register.

In track registry may register information about the persons of unknown identity when the information is believed to be related to the unsolved criminal case.

Mixing profile can be recorded in the track index only if the profile consists of unidentified persons. The same applies if the profile is partly identified and the identified dead. If the profile is partly identified and that are identified are alive, shall be obtained prior written consent of the person in order to add the mixture in the register.

§ 11a-2. Elimination Register

At NCIS be an elimination registry. The elimination registry may register information obtained pursuant to the Criminal Procedure Act § 158, second paragraph, the employees of the police, analysis and other institutions with known identity who regularly comes into contact with crime scenes and evidence. Profiles recorded in the register referred to as the elimination elimination profiles.

The purpose of registration is to prevent the profile of people who are not related to the criminal action, are recorded in the track index.

Registration in the elimination registry is voluntary and requires the written consent of the registered.

The biological material should be disposed of when the purpose of the survey is achieved. The police need to delete the elimination profile when the purpose of investigations is achieved or the reference person does consent back.

Analysis institution can store profiles for the sole purpose of documenting their activities. The information can not be used for other purposes.

§ 11a-3. Search the Registry

Profiles in Identity Register, the Register investigation and track the register are mutually searchable.

The DNA profile from the unidentified same can be applied against identity register and the register investigation for the purpose of identification. The DNA profile from the unidentified same can be applied to track the register if there is evidence that the deceased may have been involved in criminal offenses.

DNA profile identified from the same can be applied to track the register if there are reasonable grounds to suspect that the deceased may have committed a crime which by law could have led to freedom of punishment.

§ 11a-4. Reference Samples from individuals with legitimate connection to the scene or object

Information from reference persons with legal connection to the scene or object can be obtained pursuant to the Criminal Procedure Act § 158, second paragraph, if the person consents in writing. Profiles that are treated under this provision is referred to as the reference profiles.

The purpose is to prevent the profile of people who are not related to the criminal action, are recorded in the track index.

The biological material should be disposed of when the purpose of the survey is achieved. The police need to delete the reference profile when the purpose of investigations is achieved or the reference person does consent back.

Analysis institution can store profiles for the sole purpose of documenting their activities. The information can not be used for other purposes.

§ 11a-5. The procedure for the treatment of baseline samples

Is it collected reference samples should these be sent for analysis along with the other track material in the case.

If there is any benchmark tests of the case to analyze the institution comparing these with track profiles before the analysis results sent to the Criminal Police for registration.

In the absence of reference samples in the case to trace the material analyzed and the track profile of NCIS immediately sent for registration in the registry tracks.

Reference Samples collected in retrospect, to be compared with track profiles in the case. If these match the unidentified profiles that NCIS has received, to analyze the institution in writing notify NCIS so that the profile is deleted from the registry tracks.

Before track profiles recorded in the track register is to be made search in elimination index.

§ 11a-6. *According to the laws and the right of access*

Anyone who is registered in the identity register to be notified about this without undue delay.

It registered the right to be informed what information is recorded about himself in the identity register or register investigation. Others may not provide information about the Register's content.

§ 11a-7. *Disclosure of information*

The duty of confidentiality does not prevent the information from DNA index disclosed to foreign law enforcement agency or other foreign authority responsible for DNA registration.

The information in the DNA index can be delivered to the research when there is reasonable and does not cause disproportionate inconvenience to other interests. The decision on disclosure of information on research made by the Public Prosecutor. If such consent is given to the time stipulated conditions deemed necessary to ensure sustainable management of the information. The provision in § 3-5 shall apply accordingly.

§ 11a-8. *The deletion and destruction*

Identity Profile will be deleted if it is registered and legally binding acquitted after resumption. Otherwise, the identity profile will be deleted no later than 5 years after that the police are notified of the death from the National Registry.

The information in the investigation registry should be deleted when it signed a legally acquitted or the case ends in any other way without the conditions for registration of the identity register is met. This does not apply if the conditions for registration in connection with another matter is present.

Biological material that has been the basis for analysis of DNA profiles should be discarded as soon as the registration of the profile has taken place. Track Materials that are believed to be related to the unsolved criminal case can be kept as long as there is appropriate.

§ 11a-9. *Appeals*

The prosecuting authority's decision on the processing of information, access and deletion of DNA index and elimination index can be appealed to the immediate superior prosecuting authority. The rules in Chapter VI of the Public Administration Act applies as appropriate.

§ 11a-10. *Manager Responsibilities of further*

Chief of Criminal Police is responsible for processing DNA index and elimination index. Only the data manager or the one he has authorized access to the register.

Data Processing, including analysis institutions, can not process information other than that provided by written agreement or instruction. The information can not be without such an agreement are left to the other for storage or processing.

Analysis The institution will carry out analysis of the material submitted by the police. The contract shall be made in writing. The client is responsible for ensuring that the conditions for collection and analysis of the material is present.

§ 11a-11. *Storage and printing of the DNA profile*

DNA profile may only be kept by the management responsible and those who perform DNA analysis, unless otherwise specified.

It can be output from the DNA profile if it is necessary in connection with the use of DNA traces in the investigations or i retteføringen of a criminal case.

§ 11a-12. *Supplementary guidelines*

Prosecutor may issue more detailed guidelines for completing and implementing the provisions of this chapter, including the criminal offenses that will be a priority in connection with registration in the DNA registry.

§ 11a-13. *Transition Rules*

When the conditions are otherwise satisfied to DNA profiles collected before the Act of 18 January 2008 No. 3 on the expansion of the DNA registry and Act 27 June 2008 No. 67 on DNA forensics register comes into force, is registered in the Register investigation.

It can be collected biological material and made the registration of the identity register of people who get a court ruling after the entry into force of the laws mentioned in the first paragraph.

Law No. 80 of 23 November 1998²⁶⁵

Panama is presently working to implement a national DNA database under the auspices of the Institute of Legal Medicine and Forensic Science (*El Instituto de Medicina Legal y Ciencias Forenses*) (hereinafter “IML”).²⁶⁶ The IML, originally known simply as the Coroner’s Office, was established in 1942 under the auspices of the Ministry of Justice. 2009 Management Report at 5. In 1973 the office was transferred to the authority of the Attorney General. Id. Shortly thereafter in 1984 it was reorganized as the Institute of Legal Medicine as an agency of Panama’s Public Ministry. Id.

In 1998, Panama enacted Law No. 80 of Nov. 23, 1998,²⁶⁷ which nominally established a national DNA database. In doing so, Panama became only the seventh country in the world to enact forensic DNA legislation.²⁶⁸ In addition, Law No. 80 also set out the basic operating procedures applicable to the database. In doing so, it struck an odd balance between expansive government authority and a genuine sensitivity to the privacy implications of genetic technology. On the one hand, Law No. 80 authorizes Panamanian courts and prosecutors to compel the taking of DNA samples in certain enumerated circumstances, such as when making an application for Panamanian citizenship, attempting to purchase a firearm, or being subject to arrest for certain crimes. Specifically, it purports to require that the government collect DNA samples (1) when an individual is arrested for a crime in which there is genetic evidence against which a comparison can be made; (2) any individual presently incarcerated; (3) to determine familial relationship upon petition to the court; (4) from any individual seeking Panamanian citizenship, permanent residency, or a work visa; (6) when there is no other means of identifying a defendant; (7) from members of the armed forces, police, private security agencies, offices of

²⁶⁵ Law No. 80 of 23 November 1998, 23684 [G.O.] 2 (Panama); see also Law No. 50 of 13 December 2006, 25692 [G.O.] 2 (Panama) (granting autonomy to the Panamanian Institute of Legal Medicine and Forensic Science); Law No. 69 of 27 December 2007, 25949 [G.O.] 2 (Panama) (consolidating all forensic and criminalistics activities within the Panamanian Institute of Legal Medicine and Forensic Science).

²⁶⁶ Ministerio Público, Instituto de Medicina Legal y Ciencias Forenses, *Informe de Gestión: Enero 2005 - Abril 2009* [Management Report: January 2005 - April 2009] 3-4, 26-27 (May 2009) (hereinafter “2009 Management Report”).

²⁶⁷ 23684 [G.O.] 2 (Panama) (hereinafter Panamanian Law No. 80)

²⁶⁸ Osvaldo Castillo Ugarte, *La identificación de criminales a través del ADN* [The Identification of Criminals Through DNA] 59-60 (Dec. 2005) (unpublished thesis, Pontificia Universidad Católica De Chile).

the Institute of Legal Medicine, or any other person involved in criminal investigations; and (8) from individual applying permission to carry firearms.²⁶⁹

Additionally, the law provides a “catch-all” provision whereby any “competent authority” that deems it “necessary” in the circumstances to compel a DNA sample from an individual. Law No. 80 provides in relevant part: “*Las tomas de muestras biológicas para los objetivos de esta Ley, se recabarán de acuerdo con las siguientes circunstancias y casos: . . . [si] cualquier otra persona de quien, según la naturaleza de la causa o circunstancia en la que se encuentre, previa solicitud de autoridad competente se considere necesario determinar su ADN.*” [The biological samples for the purposes of this Act, shall be collected under the following circumstances and cases: . . . [if] any other person who, according to the nature of the cause or circumstance where you are, at the request of competent authority considers necessary to determine their DNA.]²⁷⁰ Taken together, these provisions of Law No. 80 grant the Panamanian government almost plenary power to collect DNA samples from all manner of its citizens and place their genetic profile on the national database.

On the other hand, Law No. 80 explicitly acknowledges that DNA technology represents a significant threat to privacy, observing that it is “capable of providing more information that is strictly necessary” [“siendo susceptible de suministrar más información de la estrictamente necesaria”]. It goes on to restrict the use of a suspects genetic information to “the essential requirements of each case” [“la exigencia indispensable de cada caso concreto”].²⁷¹ What’s more, in Art. 5, § 5 the law expressly outlaws genetic discrimination in employment or for purposes of insurance. The United States would not adopt similar antidiscrimination legislation for another decade. Nevertheless, these privacy concerns notwithstanding, Law No. 80 fails to take the most basic step in preventing misuse of genetic information: mandating the destruction of all biological samples once DNA profiles have been derived. To the contrary, it specifically contemplates that the IML will retain “the profiles *and* samples” [“los perfiles y muestras”].²⁷² The peculiarities of Law No. 80 aside, without the resources to adequately process these

²⁶⁹ Panamanian Law No. 80.

²⁷⁰ Id. at Art. 6, § 6.

²⁷¹ Id. at Art. 5, § 4.

²⁷² Id. at Art. 15 (emphasis added).

samples, a backlog of thousands of samples quickly accumulated effectively aborting Panama's nascent DNA database.²⁷³

Until 2005, the IML played a minor role in criminal investigations, offering expert medical services for both the government and private parties.²⁷⁴ It was perennially hampered by infrastructure constraints, limited and undertrained staff, and inadequate budgetary support.²⁷⁵ As part of a government-wide restructuring, the Panamanian legislature passed Law No. 50 of December 13 2006, which provided for IML autonomy from the Public Ministry.²⁷⁶ Finally, with the passage of Law No. 69 of December 27, 2007, the IML was charged with administering all of the nation's criminalistics and forensics services. Law No. 69 of Dec. 27, 2007, 25949 [G.O.] 2 (Panama).

As a result of the consolidation of all state forensic activity within the IML, as well as a dramatic increase in funding, the agency expanded to its present size of over six hundred staff. 2009 Management Report at 8-10. With greatly expanded capacity and resources, on March 27, 2007 ILM opened a new DNA processing laboratory at Ciudad del Saber.²⁷⁷ It is hoped that with this new facility, the IML will finally be able to fulfill the duties ascribed to it in Law No. 80.²⁷⁸

²⁷³ 2009 Management Report at 27.

²⁷⁴ 2009 Management Report at 6.

²⁷⁵ Id. at 6, 27.

²⁷⁶ Law No. 50 of Dec. 13, 2006, 25692 [G.O.] 2 (Panama).

²⁷⁷ 2009 Management Report at 26.

²⁷⁸ 2009 Management Report at 27-27; Panamanian Law No. 80.

Code of Criminal Procedure²⁷⁹

Art 74. § 1 The accused is not obliged to command his innocence nor any obligation to supply evidence against himself.

§ 2 The accused, however, is obliged to submit to:

- 1) visually inspected the outside of the body and the other tests are not connected with the violation of the integrity of the body, in particular, may be downloaded from the accused's fingerprints, photograph it and show for finding other people,
- 2) psychological and psychiatric examinations and tests connected to making a treatment on his body, with the exception of surgery, provided that they are made by that employee is entitled to health care in preserving the knowledge of medical indications and do not endanger the health of the accused, if studies are essential , in particular, the accused is required while maintaining the conditions subject to collecting blood, hair or body secretions, subject to paragraph 3,
- 3) collected by a body of criminal proceedings cheek swab from the mucosa, where it is essential and there is no fear that it would jeopardize the health of the accused or others.

§ 3 In relation to the suspected person can make a research or activities referred to in § 2 paragraph 1 and, by the requirements specified in § 2 paragraph 2 or 3, get blood, hair, a swab from the cheek mucosa or other body secretions.

§ 4 Minister of Justice, in consultation with the minister responsible for health shall determine, by regulation, detailed terms and manner of the accused to undergo tests and the suspected person, and make their participation activities referred to in § 2 paragraph 1 and 3 and § 3 , bearing in mind that the collection, recording and analysis of evidence were made in accordance with current knowledge in the field of criminalistics and forensic medicine.

Police Act²⁸⁰

²⁷⁹ Kodeks Postępowania Karnego z dnia 6 czerwca 1997 r. [Code of Criminal Procedure of 6 June 1997], Dz. U. Nr. 89 poz. 555, Arts. 74 & 192a (Pol.).

²⁸⁰ Ustawa o Policji z dnia 6 kwietnia 1990 r. [Police Act of 6 April 1990], Dz. U. Nr. 30 poz. 179, Arts. 1, 21a to 21e (Pol.).

Article 21a. 1. Commander in Chief of the Police maintain a database containing information about the results of the analysis of deoxyribonucleic acid (DNA), hereinafter referred to as "DNA database" and is the administrator of the Act on protection of personal data.

2. The DNA database collects and processes: (1) the information referred to in paragraph 1 in relation to: (a) the persons mentioned in Article. 74, 192 and 192a of the Code of Criminal Procedure, (b) the unidentified people and try to hide their identity, (c) the human remains unidentified, (d) the traces of unknown offenders; and (2) the person referred to in Article. 74, 192 and 192a of the Code of Criminal Procedure and unidentified people, or trying to hide his identity, including: (a) the names or aliases, (b) the names of the parents at birth and those who (c) the date and place of birth, (d) the designation and identification features of the identity document, (e) the address, (f) the number of the SSN, (g) the nationality and gender.

3. Including the database maintained by the collection of DNA samples collected from individuals or from human corpses in order to analyze the DNA in the form of cheek swabs of the mucosa, blood, or secretions of the hair bulb, and for human corpses as a biological material in a sample of tissue, hereinafter "biological samples.

4. The Chief Police Commander shall verify the data stored in the DNA database, using the appropriate provision of Article. Paragraph 20(17).

Article 21b. The information referred to in Article. Paragraph 21a. 1, introduced into the DNA database based on: (1) order the authority conducting the investigation or the court - in the case of DNA analysis carried out in connection with criminal proceedings or proceedings in juvenile cases, (2) Ordinance of the competent local police authority - in the case of human remains unidentified, unidentified people and try to hide his identity.

Article 21c. Information gathered in the DNA database shall be given to investigating criminal police and the authorities conducting the identification operations.

Article 21d. 1. Biological samples and information about DNA analysis results are stored in a database of DNA for 20 years and used to fight crime and for the identification of persons and bodies. 2. Biological samples and information on the results of DNA analysis of suspects, accused or convicted in connection with the commission of crimes and offenses referred to in Chapters XVI-XIX, XXV and XXXV of the Penal Code, as well as those referred to in Article. 94 § 1 of the Penal Code, may be stored in a database of DNA for up to 35 years.

Article 21e. Remove the information referred to in Article. Paragraph 21a. 1, the DNA database and the destruction of biological samples makes a commission appointed by the Chief of Police of these operations by making the protocol in relation to people: (1) have been acquitted or against whom criminal proceedings were discontinued - immediately after the relevant decision becomes final, (2) against which criminal proceedings were discontinued conditionally - after 6 months of the end of the test set by the court, (3) to which the proceedings were discontinued under the provisions of the Witness - one year after the date of validation of the order of redemption.

Legislative Report, A Bill to Amend the Police Act and the Code of Criminal Procedure²⁸¹

The Act assumes that the purpose of identifying a person using only the DNA test results from non-coding regions of the human genome. Under Articles. 74 § 2 and 3 of the Criminal Procedure Code. collection of biological samples for DNA testing, in the form of the mucosa cheek swabs, blood, hair bulb or secretions from the suspects, suspected and convicted - can also be done without their consent.

Also, without the consent of the persons concerned in criminal proceedings will be able to take samples for preliminary studies, from people leaving genetic traces of the scene of a crime, but not suspected of authorship - as determined Articles. 192a Code of Criminal Procedure "in order to reduce the circle of suspects or determine the probative value revealed traces. In other cases, consent will be required for those persons who are to be sampled. The Law on Police was added

²⁸¹ enacted as Ustawa z dnia 17 grudnia 2004 r. o zmianie ustawy o Policji oraz ustawy - Kodeks postępowania karnego [Act of 17 December 2004 Amending the Police Act and the Code of Criminal Procedure], Dz.U. z 2005 r. Nr 10, poz. 70.

in Article. 15, paragraph. 1 point 3a granting police the power to collect cheek swabs from the mucosa in a manner and cases provided for in the provisions of the Code of Criminal Procedure. Police officers have the power in all EU member states.

The Act stipulates that the DNA test results will be used only in certain criminal proceedings in the case of persons suspected of the authorship of all crimes and offenses referred to in Chapters XVI-XIX, and XXV, and Article XXXV. 94 § 1 of the Penal Code, whose genetic data will be left in the DNA database - just in order to combat crime. Leaving a database of DNA information on individuals suspected of committing serious crimes will use this information to fight crime and a higher than current effectiveness of police investigations. As a rule introduced 20-year period of storage of samples biological and information on the results of DNA analysis. Exception to the above. rules will be applied to biological samples and the results of DNA analysis of suspects, accused or convicted in connection with the commission of crimes and offenses referred to in Chapters XVI-XIX, XXV and XXXV of the Penal Code. In relation to their adopted a maximum 35 - year period of storage of information to cover all periods of limitation in criminal and prosecution of crimes. Review the information gathered, led by Chief of Police, as administrator of the DNA database every 10 years will ensure the removal of unnecessary data in terms of the collection, for example in case of death of the person.

Mentions that, according to the current legal status (Article 20 of the Law on Police) Police may collect, process and use for detection and identification data on the genetic code, the non-coding regions of the genome. On the basis of the authorization granted in Article. Paragraph 20. 19 of the Law on the Police Chief Police Commander after consultation with the Inspector General for Personal Data Protection, on May 16, 2002. Decree No. 6 issued on the acquisition, processing and use of information by the Police and how their establishment and operation of these collections of information, providing isolation collections of information in police databases for genetic traces of unknown offenders, and this base - called the "genome" has been organized since 2000

I. Law on Point

Law No. 5 of February 12, 2008²⁸²

II. Entry Criteria

The Portuguese National DNA database is made up of six sub-databases. There are sub-databases that include DNA profiles from: volunteers, unidentified corpses, missing persons, crime scene stains, persons convicted and sentenced to not less than three years in prison, police and forensic specialists in the state's employ.²⁸³

III. Sample Collection

Samples are collected via buccal swab.²⁸⁴ In criminal proceedings, sampling is conducted at the defendant's request or upon judicial order.²⁸⁵

IV. Removal Criteria

The DNA profiles of volunteers are kept indefinitely or until permission is revoked. Profiles of unidentified corpses and missing persons are removed from the database when an identification is made. When a profile derived from an unidentified crime scene stain is identified with a defendant, it is removed. Should that defendant subsequently be convicted, it is entered into the convicts database.²⁸⁶

V. Sample Retention

Volunteer and employees samples are destroyed immediately upon derivation of a DNA profile. Samples taken in a criminal proceeding may only be used as evidence in that proceeding. All other DNA samples are retained for the same period as their corresponding profile.²⁸⁷

VI. Database Access

Genetic analysis is performed by the Forensic Science Laboratory of the Judicial Police and the National Institute for Legal Medicine (NILM).²⁸⁸ With the approval of the Ministry of Justice, other laboratories can be hired to conduct genetic analyses. The NILM, based in Coimbra, is

²⁸² Lei Aprova a criação de uma base de dados de perfis de ADN para fins de identificação civil e criminal [Law Approving the Creation of a Database of DNA Profiles for the Purpose of Civil and Criminal Identification] Law No. 5 of February 12, 2008, Diário da República, 1st Series, No. 30, February 12, 2008 (Port.) (hereinafter Law No. 5 of Feb. 12, 2008).

²⁸³ Law No. 5 of Feb. 12, 2008, Art 15.

²⁸⁴ Law No. 5 of Feb. 12, 2008, Art. 10

²⁸⁵ Law No. 5 of Feb. 12, 2008, Art. 8

²⁸⁶ Law No. 5 of Feb. 12, 2008, Art. 26.

²⁸⁷ Law No. 5 of Feb. 12, 2008, Art. 34.

²⁸⁸ Law No. 5 of Feb. 12, 2008, Art. 5(1)

responsible for the operation and maintenance of the DNA database.²⁸⁹ DNA profiles and any corresponding personal identifying information are stored separately at different physical locations.²⁹⁰

²⁸⁹ Law No. 5 of Feb. 12, 2008, Art. 16

²⁹⁰ Art. 15(2)

I. Law on Point

Law No 76/2008 establishes the National System of Judicial Genetic Data (hereinafter “SNDGJ”).²⁹¹

II. Entry Criteria

The SNDGJ contains the genetic profiles, personal data, and investigation data for persons suspected or convicted of crimes cited in the appendix,²⁹² unidentified crime scene stains,²⁹³ genetic profiles of unknown bodies, missing persons, or persons suspected of having died in natural disasters, acts of mass murder and acts of terrorism.²⁹⁴

The SNDGJ is comprised of a set of independent subunits in which is stored information used for the purposes specified in Art. 1, namely: “to prevent and control certain categories of crimes which seriously harm the fundamental rights and freedoms of individuals, especially the right to life and physical and mental integrity, and to identify unidentified corpses, persons missing or deceased in natural disasters, accidents, mass murder offenses, or acts of terrorism.”²⁹⁵ The SNDGJ includes three sub-databases: (1) the personal database, (2) the investigation database, and (3) the DNA profiles database.²⁹⁶ The personal database contains the personal data of persons that could be perpetrators, instigators, or accomplices of crimes contained in the appendix.²⁹⁷ The personal database also includes the personal data on individuals incarcerated

²⁹¹ Lege nr. 76/2008 privind organizarea si functionarea Sistemului National de Date Genetice Judiciare [Law No. 16/2008 Establishing the National Judicial System of Genetic Data] [M.O.1] nr. 289 of 14 April 2008. See *Id.*, Art. 1.

²⁹² *Supra* note 291, Art. 4(1)(a) & (1)(b).

²⁹³ *Supra* note 291, Art. 4(1)(c)

²⁹⁴ *Supra* note 291, Art. 4(1)(d)

²⁹⁵ *Supra* note 291, Art. 1.

²⁹⁶ *Supra* note 291, Art. 2(c).

²⁹⁷ *Supra* note 291, Art. 2(d); Art. 4(1)(a). As noted, the police may take biological samples from persons suspected of crimes cited in the appendix to Law No. 76/2008. See *Supra* note 291, Art. 3. The appendix lists the following crimes: (1) Crime of murder, provided by art. 174 of the Criminal Code; (2) Crime of murder qualified, provided by art. 175 of the Criminal Code; (3) Particularly serious crime of murder, provided by art. 176 of the Criminal Code; (4) The crime of infanticide, provided by art. 177 of the Criminal Code; (5) Crime of murder of guilt, provided by art. 178 of the Criminal Code; (6) Crime or of facilitating the determination of suicide, provided by art. 179 of the

for crimes listed in the appendix.²⁹⁸ The investigation database contains information relating to crimes and other data of interest to police, including profiles derived from crime scene stains that have been identified as belonging to a specific person.²⁹⁹ The DNA profiles database contains the genetic profiles of individuals included on the personal database as well as those derived from unidentified crime scene stains.³⁰⁰

III. Sample Collection

Romanian law permits taking DNA samples from innocent persons whose genetic material may inadvertently be found at a crime scene (e.g. in a public place) as well as the victims of crimes for the purpose of excluding them from suspicion—provided such samples are collected with the individual's consent.³⁰¹ Genetic profiles derived from these samples will be verified by comparison to the SNDGJ only the purpose for which sample was taken, but will not be stored in any of the databases.³⁰²

Criminal Code; (7) The offense of the injury, provided by art. 181 of the Criminal Code; (8) Felony serious injury, provided by art. 182 of the Criminal Code; (9) Impactor crime causing death or injury, provided by art. 183 of the Criminal Code; (10) The fault personal injury crime, provided by art. 184 of the Criminal Code; (11) Offense of deprivation of liberty unlawfully, provided by art. 189 of the Criminal Code; (12) Crime of slavery, provided by art. 190 of the Criminal Code; (13) Crime of rape, provided by art. 197 of the Criminal Code; (14) Crime of sexual intercourse with a minor, provided by art. 198 of the Criminal Code; (15) Offense of sexual perversion, provided by art. 201 of the Criminal Code; (16) Sexual corruption offenses, provided by art. 202 of the Criminal Code; (17) Crime of incest, provided by art. 203 of the Criminal Code; (18) Offense of robbery, provided by art. 211 of the Criminal Code; (19) Crime of torture, provided by art. 2671 of the Penal Code; (20) Offense of failure of the system of nuclear material or other radioactive materials, provided by art. 2791 of the Penal Code; (21) Offense of failure of the regime of explosive materials, provided by art. 280 of the Criminal Code; (22) Minor crime of ill treatment, provided by art. 306 of the Criminal Code; (23) Propaganda for war crime, provided by art. 356 of the Criminal Code; (24) Crime of genocide, provided by art. 357 of the Criminal Code; (25) Crime of inhumane treatment, provided by art. 358 of the Criminal Code; (26) Felony destruction of property and ownership objectives, stipulated in art. 359 of the Criminal Code; (27) Crime of destruction, pillage or acquiring cultural values, provided by art. 360 of the Criminal Code; (28) Terrorism provisions of Law no. 535/2004 on preventing and combating terrorism; (29) Crimes mentioned in art. 2, 3, 10 and 12 of Law no. 143/2000 on combating illicit drug trafficking and consumption, with subsequent modifications; and (30) Offense referred to in Art. 22 para. (3) of Government Emergency Ordinance no. 121/2006 on the legal regime of drug precursors, approved with modifications by Law no. 186/2007.

²⁹⁸ *Supra* note 291, Art. 2(d); Art. 4(1)(b).

²⁹⁹ *Supra* note 291, Art. 2 (e).

³⁰⁰ *Supra* note 291, Art. 2(f).

³⁰¹ *Supra* note 291, Art. 4(3).

³⁰² *Supra* note 291, Art. 4(4).

Romanian law requires that biological samples be collected via buccal swab or the “noninvasive” collection of facial epithelial cells.³⁰³ The law provides that all said biological samples are to be collected subject to the written request of the investigating prosecutor or the court. In the case of minors, the consent of a legal guardian or court order is required.³⁰⁴

An order of conviction for any of the crimes listed in the appendix functions also as an order for the collection of a biological sample from the convicted person and the inclusion of the DNA profile derived from that sample in the SNDGJ.³⁰⁵

IV. Removal Criteria

The genetic profiles of suspects are retained on the database until the investigating prosecutor or a court of competent jurisdiction orders their deletion.³⁰⁶ The genetic profiles of persons convicted of crimes listed in the appendix are retained until they reach the age of sixty. If said persons die prior to age sixty, their profiles are kept for five years after their death.³⁰⁷ Genetic profiles derived from unidentified crime scene stains or taken from unidentified bodies or missing persons are kept until identified or for twenty five years after their entry onto SNDGH.³⁰⁸

V. Sample Retention

The biological samples collected from persons suspected or convicted of any offense enumerated in the appendix are retained as long as the law permits that the genetic profiles derived therefrom be kept.³⁰⁹

VI. Database Access

³⁰³ *Supra* note 291, Art. 5(1).

³⁰⁴ *Supra* note 291, Art. 5(2) to 5(5).

³⁰⁵ *Supra* note 291, Art. 7.

³⁰⁶ *Supra* note 291, Art. 13(1) to (2).

³⁰⁷ *Supra* note 291, Art. 14

³⁰⁸ *Supra* note 291, Art. 16

³⁰⁹ *Supra* note 291, Art. 17.

The authority responsible for processing the data contained in SNDGJ is the Forensic Institute of the Romanian Police General Inspectorate (hereinafter “Romanian Forensic Institute”), itself a subdivision of the Ministry of the Interior and Administrative Reform. The Romanian Forensic Institute is the custodian and manager of SNDGJ³¹⁰ The Romanian Forensic Institute is structured in such a way so that access to the different databases is restricted to different personnel, among which communication is tightly controlled.³¹¹ The processing of personal data entered in SNDGJ shall be subject to the Law no. 677/2001 on the protection of personal data.³¹²

Law No. 76/2008 forbids the use of biological samples taken pursuant thereto for any purposes other than those specifically enumerated therein.³¹³ Said biological samples may only be subject to analysis that yields genetic profiles that do not contain health data or any other personal information that may affect the right to intimate and familial relations and personal integrity.³¹⁴

³¹⁰ *Supra* note 291, Art. 9(1).

³¹¹ *Supra* note 291, Art. 9(2).

³¹² *Supra* note 291, Art. 9.(6)

³¹³ *Supra* note 291, Art. 10.

³¹⁴ *Supra* note 291, Art. 12.

Criminal Law (Temporary Provisions) Act³¹⁵

Registration of Criminals Act³¹⁶

The provisions of the two statutes work in tandem to establish and regulate Singapore's National DNA database.

Criminal Law (Temporary Provisions) Act (Chapter 67) §§ 27 to 27C [added by Act No. 32 of 2004, see Digest of Acts Passed Between 1 September 2004 and 28 February 2005, 17 S. Ac. L.J. 485, 487-88 (2005) (Sing.).]

27. Interpretation of sections 27A, 27B and 27C

(1) In sections 27A, 27B and 27C —

"appropriate consent" means (a) for a person aged 16 years and above, the written consent of that person; (b) for a person aged 14 years and above but below the age of 16 years, the written consent of both that person and of his parent or guardian; and (c) for a person below the age of 14 years, the written consent of his parent or guardian, given to a police officer or officer of the Central Narcotics Bureau in charge of the case after that officer has informed the person concerned, his parent or guardian or both, as the case may be, of the purpose for which a body sample is required from such person and the manner by which such body sample is to be taken from him;

"DNA information" means genetic information derived from the forensic DNA analysis of a body sample;

(2) Subject to subsection (3), the Minister may prescribe additional types of body samples that may be taken under section 27A.

(3) The additional types of body samples that may be prescribed under subsection (2) shall not include samples to be obtained from (a) the genital or anal area of a person's body; (b) a person's body orifice other than the mouth; or (c) the breasts of a woman.

³¹⁵ Criminal Law (Temporary Provisions) Act, (2000) Cap. 67, §§ 27 to 27C (Sing.)

³¹⁶ Registration of Criminals Act, (1985) Cap. 268, §§ 13A to 13H (Sing.)

27A Taking of photographs, finger impressions, body samples, etc., from person arrested, detained or subject to police supervision

(1) A police officer or officer of the Central Narcotics Bureau may exercise all or any of the following powers in respect of any person referred to in subsection (2): . . . (c) cause body samples of such person to be taken by a person authorised under section 27B (1); or (d) send any photograph, finger impression, record of particulars or body sample so taken or made to the Commissioner of Police for identification and report.

(2) The powers referred to in subsection (1) may be exercised in respect of any of the following persons: (a) a person who, on 21st October 2004, is under arrest and detained under section 44 or 45; (b) a person who, on 21st October 2004, is under detention or subject to supervision under section 30, 32 or 38; (c) a person who, on or after 21st October 2004, is arrested, detained or placed under police supervision under any of the provisions of this Act.

(3) Every person mentioned in subsection (2) shall . . . (c) subject to subsection (5), submit to the taking of his body samples by a person authorised under section 27B (1).

(4) Where any person mentioned in subsection (2) fails, without reasonable excuse, to comply with subsection (3) (a) that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one month or to both; and (b) a police officer or officer of the Central Narcotics Bureau may use such force as is reasonably necessary to take or cause to be taken the photographs, finger impressions and body samples of that person.

27B Further provisions for taking of body samples

(1) For the purposes of section 27A(1)(c), a body sample may only be taken by (a) a registered medical practitioner; (b) a police officer or officer of the Central Narcotics Bureau who has received training for the purpose; or (c) any other suitably qualified or trained person who is duly appointed in writing by the Commissioner of Police as an authorised person for the purpose.

27C Retention of photographs, finger impressions, particulars and body samples taken

(1) The Commissioner of Police shall cause to be maintained . . . (b) a DNA database (whether in a computerised form or otherwise) in which shall be stored all DNA information derived from a body sample taken from a person under section 27A.

(2) Any information stored in the register and the DNA database under subsection (1) may be used for all or any of the following purposes: (a) for comparison with any other information or any other DNA information, as the case may be, obtained in the course of an investigation of an offence conducted by a police officer or officer of the Central Narcotics Bureau; (b) for comparison with information in the register established under section 4 of the Registration of Criminals Act (Cap. 268) or with DNA information in the DNA Database established under section 13F of that Act, as the case may be; (ba) for comparison with information or DNA information, as the case may be, in the register or DNA database, respectively, established under (i) section 26D of the Intoxicating Substances Act (Cap. 146A); or (ii) section 40D of the Misuse of Drugs Act (Cap. 185); (c) for any proceedings for any offence; (d) for administering the register and DNA database for the purposes of this Act; (e) for such other purposes as may be prescribed.

(3) Where any photograph, finger impression, record of particulars or body sample has been taken under section 27A from an arrested person and that person is subsequently released, without being (a) convicted of any offence under this Act; or (b) placed on detention or supervision under this Act, the Commissioner of Police shall cause all such photographs, finger impressions, records of particulars and body samples taken from that person to be removed from the register and DNA database maintained under subsection (1).

(4) For the purposes of subsection (2)(c), . . . (b) any DNA information stored in the DNA database under subsection (1)(b); and (c) any certificate or report purporting to have been compiled or made from information stored in the register or DNA database maintained under subsection (1), shall, if produced from proper custody and authenticated by the signature of the Commissioner of Police or a police officer authorised by the Commissioner of Police, be admissible in evidence in any proceedings, without proof of signature; and, until the contrary is proved, shall be proof of all matters contained therein or appearing thereon. [i.e. creates a rebuttable presumption of whatever the DNA evidence is offered to prove?]

Registration of Criminals Act (Chapter 268) §§ 13A to 13H [added by Act No. 45 of 2002, see Digest of Acts Passed Between 1 September 2002 and 28 February 2003, 15 S. AC. L.J. 167, 179-80 (2003) (Sing.).]

13A Interpretation of this Part

(1) In this Part — see Singapore Criminal Law (Temporary Provisions) Act § 27.

Body samples may be taken from arrested persons, convicted persons and prisoners. [if normal cannons of statutory construction apply, inclusion of “and prisoners” implies that there are “prisoners” who are not “convicted persons” (accord. *Russello v. United States*, 464 U.S. 16, 23 (1983) (courts should not construe different terms within the same statute to embody the same meaning.)).]

13B.

(1) Subject to the provisions of this Part, a body sample may be taken for forensic DNA analysis from any person who, on or after the date of commencement of the Registration of Criminals (Amendment) Act 2002, (a) is arrested and accused of a crime; (b) is convicted of a crime; or (c) is serving his term of imprisonment in connection with a crime of which he has been convicted.

13C Consent for taking of blood sample

(1) No sample of blood shall be taken from a person who is arrested and accused of a crime unless the appropriate consent is given for the taking of the sample.

(2) If the appropriate consent required under subsection (1) for the taking of a sample of blood from a person is refused without good cause or cannot be obtained despite all reasonable efforts, that person may be taken before a Magistrate and the Magistrate may, if satisfied that there is reasonable cause to believe that the sample may confirm or disprove whether that person was involved in committing the crime, order that the person provide the sample required.

(3) Where it is shown that the appropriate consent required under subsection (1) for the taking of a sample of blood from a person was refused without good cause, the court, in determining (a) whether to commit that person for trial in connection with the crime of which he is accused of committing; (b) whether there is a case to answer against that person; or (c) whether that person is guilty of the crime with which he has been charged, may draw such inference from the refusal

as it thinks proper and, based on such inference, may treat the refusal as corroboration or amounting to corroboration of any relevant evidence against that person.[i.e. refusal to submit to DNA sample creates rebuttable corroboration of whatever underlying act warranted the DNA sample?]

13F DNA database

(1) The Registrar shall maintain (whether in computerised form or otherwise) a DNA database in which shall be stored all DNA information derived from a body sample taken from a person under this Part. [i.e. profiles not samples]

(2) Any information stored in the DNA database may be used for any of the following purposes:

(a) for forensic comparison with any other DNA information in the course of an investigation of an offence conducted by a police officer; (aa) for comparison with DNA information in the DNA database established under (i) section 27C of the Criminal Law (Temporary Provisions) Act (Cap. 67); (ii) section 26D of the Intoxicating Substances Act (Cap. 146A); or (iii) section 40D of the Misuse of Drugs Act (Cap. 185); (b) for any proceedings for any offence; (c) for administering the DNA database for the purposes of this Part; and (d) for such other purposes as may be prescribed.

13G Removal of DNA information from register upon acquittal or discharge, etc.

Where any body sample has been taken under section 13B(1)(a) from a person who is under arrest and accused of a crime . . . and (a) investigations reveal that he was not involved in the commission of any crime . . . (b) it is decided that he shall not be charged with any crime and he has neither admitted to, nor been dealt with by way of being cautioned by any police officer in respect of any crime; (c) the charge or all the charges against him in respect of any crime or crimes (as the case may be) is or are withdrawn; (d) he is discharged by a court before conviction of the crime or of all the crimes (as the case may be) with which he has been charged; (e) he is acquitted of the crime or of all the crimes (as the case may be) with which he has been charged, at trial or on appeal; or (f) he is subsequently convicted of the crime but the Commissioner of Police directs under section 7 that he need not be registered under Part II, the authorised officer in charge of the case shall immediately inform the Registrar of the occurrence of the relevant

event and the Registrar shall immediately remove the DNA information of that person from the DNA database.

13H Removal of registrable particulars, etc., of person upon death or attainment of 100 years of age

The Registrar shall remove from the register and from the DNA database the registrable particulars and DNA information of any person (a) whose death has been registered under the Registration of Births and Deaths Act (Cap.267); or (b) who, the Registrar is satisfied, has attained 100 years of age.

The Act n. 417/2002 -Use of DNA analysis for identification of persons³¹⁷

Persons condemned to punishment other than a fine, all suspects, if warranted by possible prison sentence, and all crime scene stains³¹⁸

There are no restrictions to the entry of DNA profiles which are derived from unidentified crime scene stains. The DNA profiles of crime suspects and convicted offenders can be entered into the database when they are suspected or convicted of any recordable offence.

There are no restrictions to the collection of DNA samples from crime suspects, convicted offenders and unidentified crime scene stains. The taking of a DNA sample from minors and mentally ill persons is only allowed when this is necessary for the search for missing persons.

Convicted persons' profiles are retained for ten years after conviction, suspects' profiles are removed upon their acquittal, and crime scene stains are kept until they are identified, when the underlying case is solved, or after fifteen or thirty years depending on the severity of the underlying offense³¹⁹

According to the provisions in § 69 (6) and § 69 (7) of the amended Act on the Police Force of the Slovak republic, any data (including DNA profiles) should be destroyed without undue delay if the police do not need these data for the fulfilling of its tasks. Police officials are obliged to check at least once within three years whether storage of these data is still necessary. Based on the purpose of the DNA profiles which are derived from crime scene stains, it can therefore be concluded that these DNA profiles are stored in the database until a match is made. DNA profiles of convicted offenders must be removed hundred years following the birth of the individual. This provision is also valid for the profiles of persons who could not be prosecuted due to a non compos mentis state at the time of committing the crime or who can not be prosecuted due to insanity. The DNA profiles of crime suspects must be removed upon acquittal.

³¹⁷ E.U. 9445/1/06 at 8.

³¹⁸ See EU Current Practices at 74.

³¹⁹ See EU Current Practices at 75.

All samples must be destroyed “as soon as possible”³²⁰ [GET QT FROM LAW]

The DNA samples of convicted offenders can be retained. Those of crime suspects must be destroyed upon acquittal.

The Forensic Institute

The database administrator and the DNA analysts have access to all information contained in the database (surname, given names, birth date and place of birth, personal no. or passport number (foreign nationals), resident address, nationality, other data characterizing the person). Police officials and judicial officials only have access to the results of the comparisons that are made between the various DNA profiles. DNA profiles can be exchanged with the other EU Member States through Interpol.

CODIS v5.7 Software

³²⁰ See EU Current Practices at 75.

Police Act (Official Journal of the Republic of Slovenia nr. 49/98, 93/2001, 79/2003, 50/04) - Articles 59 - 63.³²¹

Police Act [Zakon o policiji]

IV. Collection, Protection and Security Of Data [Zbiranje, Varstvo in Zavarovanje Podatkov]

The police managed the collection of personal data (hereinafter referred to as records) by the performance of the collected, processed, stored, transmitted and used by police officers. With regard to the exercise of police powers Police keep and maintain the following records: . . . (8) DNA records of investigations.³²² Minister prescribes in detail the method of keeping police records.

In addition to common data containing individual records the following information: . . . (8) DNA records of investigations: the place, time and reason for taking a sample of DNA, the name of the person deprived of his sample and DNA profile of the samples taken³²³

Data are stored: Records from § 8 of Article 59 of this Act to stop a police investigation or the completion of actions to protect, or to issue a decision to reject an instance of the criminal, failing that, to the limitation of law enforcement³²⁴

After the deadlines specified in the preceding article, the data from police records are treated in accordance with the regulations governing the operations of public authorities with a permanent collection of documentary material and the handling of public archival material. Access to this information is granted only to the police and to those in other government authorities authorized only to investigate suspected criminal offense for which the perpetrator is prosecuted ex officio, or in other cases specified by law.³²⁵

³²¹ E.U. 9445/1/06 at 8.

³²² Zakon o policiji (uradno prečiščeno besedilo) [Police Act (official consolidated text)] (ZPol-UPB7), Uradni list RS, št. 66/2009 z dne 21. 8. 2009 S. 9317, Art. 59 (hereinafter “ZPol-UPB7”)

³²³ ZPol-UPB7 at Art. 61

³²⁴ ZPol-UPB7 at Art. 63

³²⁵ ZPol-UPB7 at Art. 64

Code of Criminal Procedure [Zakon o kazenskem postopku]

XVIII Investigative Actions [Preiskovalna Dejanja]

7. Expert Actions [7. Izvedenstvo]

Article 266³²⁶

(1) Physical examination of a defendant shall also be made without its consent, if need be ascertain the facts relevant to criminal proceedings. Physical examination of other persons may be carried out without their consent only if they must determine whether it is in their body established trail or a result of crime.

(2) Collection of blood and other medical acts under the rules of medical science made the analysis and findings of other facts relevant to criminal proceedings may be made without the consent of the review, unless the resulting damage to his health.

(3) Not allowed to the defendant or witness to use medical interventions or to give them such funds, which would impact on their available in izpovedovanju. (as witnesses?—no clear translation)

Authority: Police as a body within the Ministry of the Interior, department: General Police Directorate - Forensic Science Laboratory.

DB 2 IBM

The searches are concluded with fully or partly defined DNA profiles.

³²⁶ Zakon o kazenskem postopku (uradno prečiščeno besedilo) [Criminal Procedure Act (official consolidated text)] (ZKP-UPB3), Uradni list RS, št. 8/2006 z dne 26.1. 2006 S. 745, Art. 266 (Slovn.)

I. Law on Point

Although this paper looks at the strengthening of both the SAPSs powers to collect and retain fingerprints and the powers of the SAPS to collect and retain DNA samples, it must be mentioned at the outset that South Africa does not have any specific legislation regulating the taking of fingerprints and the establishment of a DNA database. To clarify this statement: Firstly, there is legislation which broadly regulates the taking, use and destruction of fingerprints for use in criminal cases and there is legislation that broadly regulates the taking and use of fingerprints for the purposes of identification, but there is no singular piece of legislation solely regulating this area for the purposes of criminal investigations. Secondly, although the taking of blood samples in criminal cases and the ascertainment of other bodily features is broadly regulated by the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (CPA), there is no legislation in South Africa which specifically provide for the establishment of a DNA database containing samples taken from accused and convicted persons, against which samples collected at a crime scene can be run, in an effort to establish the identity of a perpetrator.

Criminal Procedure Act, 1977

The ascertainment of bodily features of the accused is regulated by Chapter 3 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (CPA), which grants powers, under section 37, in respect of the taking of fingerprints, palm-prints, foot-prints, the drawing of blood samples, attendance at an identity parade and the taking of photographs.^{327,328,329} Section 37 should be

³²⁷ Section 37 of the CPA reads as follows:

Powers in respect of prints and bodily appearance of accused

(1) Any police official may-

(a) take the finger-prints, palm-prints or foot-prints or may cause any such prints to be taken-

(i) of any person arrested upon any charge;

(ii) of any such person released on bail or on warning under section 72;

(iii) of any person arrested in respect of any matter referred to in paragraph (n), (o) or (p) of section 40 (1);

(iv) of any person upon whom a summons has been served in respect of any offence referred to in Schedule 1 or any offence with reference to which the suspension, cancellation or endorsement of any licence or permit or the disqualification in respect of any licence or permit is permissible or prescribed; or

(v) of any person convicted by a court or deemed under section 57 (6) to have been convicted in respect of any offence which the Minister has by notice in the Gazette declared to be an offence for the purposes of this subparagraph;

(b) make a person referred to in paragraph (a) (i) or (ii) available or cause such person to be made available for identification in such condition, position or apparel as the police official may determine;

(c) take such steps as he may deem necessary in order to ascertain whether the body of any person referred to in paragraph (a) (i) or (ii) has any mark, characteristic or distinguishing feature or shows any condition or appearance; Provided that no police official shall take any blood sample of the person concerned nor shall a police official make any examination of the body of the person concerned where that person is a female and the police official concerned is not a female.

(d) take a photograph or may cause a photograph to be taken of a person referred to in paragraph (a) (i) or (ii).

(2) (a) Any medical officer of any prison or any district surgeon or, if requested thereto by any police official, any registered medical practitioner or registered nurse may take such steps, including the taking of a blood sample, as may be deemed necessary in order to ascertain whether the body of any person referred to in paragraph (a) (i) or (ii) of subsection (1) has any mark, characteristic or distinguishing feature or shows any condition or appearance.

(b) If any registered medical practitioner attached to any hospital is on reasonable grounds of the opinion that the contents of the blood of any person admitted to such hospital for medical attention or treatment may be relevant at any later criminal proceedings, such medical practitioner may take a blood sample of such person or cause such sample to be taken.

(3) Any court before which criminal proceedings are pending may-

(a) in any case in which a police official is not empowered under subsection (1) to take finger-prints, palm-prints or foot-prints or to take steps in order to ascertain whether the body of any person has any mark, characteristic or distinguishing feature or shows any condition or appearance, order that such prints be taken of any accused at such proceedings or that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain whether the body of any accused at such proceedings has any mark, characteristic or distinguishing feature or shows any condition or appearance;

(b) order that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain the state of health of any accused at such proceedings.

(4) Any court which has convicted any person of any offence or which has concluded a preparatory examination against any person on any charge, or any magistrate, may order that the finger-prints, palm-prints or foot-prints, or a photograph, of the person concerned be taken.

(5) Finger-prints, palm-prints or foot-prints, photographs and the record of steps taken under this section shall be destroyed if the person concerned is found not guilty at his trial or if his conviction is set aside by a superior court or if he is discharged at a preparatory examination or if no criminal proceedings with reference to which such prints or photographs were taken or such record was made are instituted against the person concerned in any court or if the prosecution declines to prosecute such person.

³²⁸ Section 40(1)(n), (o) and (p) reads as follows: “(1) A peace officer may without warrant arrest any person- (n) who is reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;

(o) who is reasonably suspected of having failed to pay any fine or part thereof on the date fixed by order of court under this Act;

read together with section 212(6) and (8) (proof of fingerprints and dispatch thereof, by means of affidavit); section 225 (admissibility of prints or bodily features as proof); and section 272 (proof of previous convictions with the aid of fingerprints). Each of these sections are discussed here in turn together with relevant case law, where applicable, in order to set out the current legislative framework regulating the taking of fingerprints and blood samples in criminal cases.

In terms of section 37(1)(c), a police official may not take a blood sample from an accused, but a police official may take such steps as he may deem necessary in order to ascertain whether the body or any person referred to in paragraph (a)(i) or (ii) has any mark, characteristic or distinguishing feature or shows any condition or appearance. Blood samples may be taken, in terms of section 37(2), on own authority by a medical officer of a prison or a district surgeon or if a police official requests it, another registered medical practitioner or a registered nurse may also take such sample. Any registered medical practitioner attached to any hospital who on reasonable grounds is of the opinion that the contents of the blood of any person admitted to such hospital for medical attention or treatment may be relevant in later criminal proceedings, may in terms of subsection (2)(b) take a blood sample from such person. In terms of subsection (3), a court before which criminal proceedings are pending may in any case in which a police official is not empowered under subsection (1) to take steps in order to ascertain whether the body of any person has any mark, characteristic or distinguishing feature or shows any condition or appearance, order that such steps, including the taking of a blood sample, be taken. Although not as clearly worded as in reference to the destruction of all prints taken under section 37, the wording “record of steps taken under this section”, as it appears in subsection (5), has been interpreted as requiring the destruction of the result of the bodily examination in all cases where the accused was found not guilty.

(p) who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or any law relating to prisons;”.

³²⁹ Section 57(6) of the CPA reads as follows: “(6) An admission of guilt fine paid at a police station or a local authority in terms of subsection (1) and the summons or, as the case may be, the written notice surrendered under subsection (3), shall, as soon as is expedient, be forwarded to the clerk of the magistrates court which has jurisdiction, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such summons or, as the case may be, such written notice and of any summons or written notice surrendered to the clerk of the court under subsection (3), in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question”.

Section 37, if read together with section 225(2), allows blood samples to be taken against the will of the person and such evidence is admissible in court, even if obtained in a manner not in accordance with section 37.³³⁰

In *S v Orrie and Another* 2004 (1) SACR 162 (C), the state applied, by way of a notice of motion and founding affidavit for an order in terms of section 37(1)(c) of the CPA read with subsections (2)(a) and (b), that the investigating officer is authorized, in conjunction with a medical officer or a district surgeon, to take a blood sample of each of the accused “in order to ascertain whether such sample(s) has any mark, characteristic or distinguishing feature by means of DNA analysis”.³³¹

The state brought this application after the accuseds refusal to furnish blood samples in response to an informal request therefore. The accused opposed the application and argued that being subjected to such blood tests for the purpose of compiling a DNA profile will infringe the accuseds fundamental rights to dignity, to freedom and security of the person, the right to bodily integrity, the right to privacy and the right to be presumed innocent and not to have to assist the prosecution in proving its case (§§ 10; 12(1); 12(2); 14(a); 35(3)(h) and 35(3)(j) of the Constitution.

The Court held as follows in this regard (own emphasis added):³³²

“There can be little doubt that the involuntary taking of a blood sample for the purposes of DNA profiling is both an invasion of the subjects right to privacy and an infringement, albeit slight, of the right to bodily security and integrity. To the extent, however, that the involuntary taking of a blood sample from an accused for the purposes of compiling a DNA profile for use in criminal proceedings infringes his or her right to privacy, dignity and bodily integrity, **I am of the view that the limitation clause of the Constitution (§ 36 of Act 108 of 1996) permits the limitation of these rights, through the medium of s 37 of the Criminal Procedure Act.** I consider that, taking into account the factors set out in s

³³⁰ See A Kruger “Hiemstras Criminal Procedure” (2008) Comments on Chapter 3, at page 11 (available on Lexisnexis).

³³¹ At paragraph 2.

³³² At paragraph 20.

36(1)(a)-(e), such a limitation is necessary and justifiable in an open and democratic society based on human dignity, equality and freedom. Put differently, the taking of blood samples for DNA testing for the purposes of a criminal investigation is a reasonable and necessary step to ensure that justice is done and is reasonable and necessary in balancing the interests of justice against those of individual dignity”.

From a reading of the above, it is clear that the CPA is silent on the taking of bodily samples for the purpose of DNA analysis. It currently only provides for the taking of a blood sample for DNA testing in specific instances and directly related to a specific case. **Therefore, the legislation does not support DNA matches between different cases and the use of DNA profiles of suspects and convicted offenders on a DNA database.** At the moment the Criminal Record and Forensic Science Service (CRFSS) of the SAPS have a database of crime samples (samples collected at a crime scene) and a very limited database containing the DNA profiles of suspects.

In *Levack and Others v Regional Magistrate, Wynberg, and Another* 2004 (5) SA 573 (SCA), the application of section 37 of the CPA was broadened to include voice recognition. The Court held that although the section does not expressly mention the voice it does form part of the innumerable bodily features that the wording of the section expressly contemplates. In deciding the case, Cameron JA again confirmed that “autoptic evidence”, evidence derived from the accused's own bodily features, does not infringe the right to silence or the right to be compelled to give evidence. (at paragraph 19) Cameron JA held in this regard as follows: “Differently put, it is wrong to suppose that requiring the appellants to submit voice samples infringes their right either to remain silent in the court proceedings against them or not to give self-incriminating evidence” (at paragraph 17). In doing so, Cameron JA reaffirmed the findings of courts in the cases of *S v Huma and Another* 1996 (1) SA 232 (W) and *S v Maphumulo* 1996 (2) SACR 84 (N) (footnote 23). Cameron JA relied heavily on the findings of the court in *Ex parte Minister of Justice: In re R v Matemba* 1941 AD 75, where Watermeyer JA held as follows in reference to the non-voluntary taking of an accused's palm-print:

“Now, where a palm print is being taken from an accused person he is, as pointed out by Innes CJ in *R v Camane* 1925 AD at 575, entirely passive. He is not being

compelled to give evidence or to confess, any more than he is being compelled to give evidence or confess when his photograph is being taken or when he is put upon an identification parade or when he is made to show a scar in Court. In my judgment, therefore, neither the maxim *nemo tenetur se ipsum prodere* nor the confession rules make inadmissible palm prints compulsorily taken”.

In *S v Maphumulo*, Combrink J held as follows:

“I have concluded, accordingly, that the taking of the accuseds fingerprints, whether it be voluntarily given by them, or taken under compulsion in terms of the empowerment thereto provided in section 37(1), would not constitute evidence given by the accused in the form of testimony emanating from them, and as such would not violate their rights as contained in section 25(2)(c), or 25(3)(d) of the [Interim] Constitution. Nor does it appear to be a violation of the accused rights as contained in section 10 of the [Interim] Constitution, which reads: “Every person shall have the right to respect for and protection of his or her dignity”.”

In *S v Huma and Another* (2) SACR 411 (W), the accused objected to having his fingerprints taken on two grounds. The first is that the taking of fingerprints impairs the dignity of a person and is therefore a contravention of the constitutional right to dignity contained in sections 10 and 11 of the Interim Constitution. The second ground of objection was based on the constitutional right to remain silent as contained in section 25(3)(c) and (d) of the Interim Constitution. In colloquial terms this is called the privilege against self-incrimination. Claassen J held as follows in regard to the question as to whether or not the taking of fingerprints constitutes inhuman or degrading treatment (page 416) (own emphasis added):

In my judgment it does not constitute inhuman or degrading treatment for the following reasons:

1. The taking of fingerprints is accepted worldwide as a proper form of individual identification. It is throughout the world used for the issuing of identity documents and passports. The same holds true for South Africa. The act of

making ones fingerprints available for purposes of issuing an identity document or a passport can never be regarded as inhuman or degrading treatment.

2.The taking of fingerprints per se in private and not in Court or a public place (see *S v Mkize* 1962 (2) SA 457 (N) at 460) can in no way lower a persons self-esteem or bring him into dishonor or contempt, or lower his character or debase him. The definition of inhuman or degrading as referred to above in the judgment of Mahomed AJA therefore cannot, in my view, apply to the mere act of taking ones fingerprints.

3.The process of taking ones fingerprints does not, in my view, constitute an intrusion into a person's physical integrity. No physical pain of any kind accompanies this process. By comparison, the taking of a blood sample constitutes more of an intrusion into a persons physical integrity than the mere taking of one's fingerprints. When a blood sample is taken the skin is ruptured and it is accompanied by a small element of pain. Pain and violation of a persons physical integrity are also associated with corporal punishment and other forms of punishment. By comparison, in my judgment, the taking of fingerprints is on par with the mere taking of a photograph, which does not, in my view, violate the physical integrity of a person.

4.When fingerprints are taken pursuant to the provisions of s 37 it has to be borne in mind that those fingerprints will be destroyed in the event of the accused being found not guilty. There is therefore an additional safeguard built into the application of the provisions of this section.

5.The taking of fingerprints can potentially be a helpful procedure to the benefit of the accused in proving his innocence. If, after the fingerprints have been taken, a comparative chart is made and it is found that the necessary requirements for purposes of comparison are lacking, then the whole process of taking fingerprints would actually have rebounded to the accuseds benefit.

For the above reasons I have come to the conclusion that the value judgment which I have to make is such that the taking of fingerprints does not constitute a

contravention of a persons dignity, protected and enshrined in ss 10 and 11(2) of the Constitution. However, even if I am wrong in this finding, I am of the view that s 33(1) allows a limitation to a persons constitutional right to dignity which is reasonable and necessary in a democratic society in respect of fingerprint-taking for purposes of compiling a comparative chart in criminal proceedings. This limitation is reasonable and necessary to enable the administration of justice to run its proper course. In my view, the fact that fingerprints are to be taken for purposes of a criminal investigation is a reasonable and necessary step in a democratic society to ensure that justice is done and is reasonable and necessary to balance the interests of justice against the interest of individual dignity. (emphasis added)

With regard to the privilege against self-incrimination, Claassen J held that the “privilege against self-incrimination does not apply to procedures relating to the ascertainment of bodily features such as the procedures involved in identification parades, the taking of finger- and footprints, blood samples and the showing of bodily scars ... [t]hese procedures relate to the furnishing of what has been termed “real” evidence, as opposed to the furnishing of oral or testimonial evidence by the accused” (at page 417).

Section 225 of The CPA: Evidence Obtained Not in Accordance With Section 37 or Against the Will of The Accused

Section 225 of the CPA reads as follows:

(1) Whenever it is relevant at criminal proceedings to ascertain whether any finger-print, palm-print or foot-print of an accused at such proceedings corresponds to any other finger-print, palm-print or foot-print, or whether the body of such an accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the finger-prints, palm-prints or foot-prints of the accused or that the body of the accused has or had any mark, characteristic or distinguishing feature or shows or showed

any condition or appearance, including evidence of the result of any blood test of the accused, shall be admissible at such proceedings.

(2) Such evidence shall not be inadmissible by reason only thereof that the fingerprint, palm-print or foot-print in question was not taken or that the mark, characteristic, feature, condition or appearance in question was not ascertained in accordance with the provisions of section 37, or that it was taken or ascertained against the wish or the will of the accused concerned

In terms of subsection (2), evidence concerning bodily features is admissible even if the presence of those features was determined against the will of the accused. (Refer in this regard to the *Maphumulo* judgment above).

Although not relevant for the purpose of this report it should be noted that section 212 of the CPA deals with proof of certain facts by affidavit or certificate. The manner in which the finding, lifting, dispatch and examination of prints can be proved is provided for in section 212(4)(a), (6) and (8). In addition, section 272 of the CPA provides that a record, photograph or document (SAP69), which “relates to a fingerprint” is the normal evidential material through which previous convictions are proved.

Firearms Control Act, 2000 (Act No. 60 of 2000)

In terms of section 6 of the Firearms Control Act, the Registrar may issue any competency certificate, licence, permit or authorization contemplated in the Act, upon receipt of an application completed in the prescribed form, including a full set of fingerprints from the applicant. Section 123 of the Act provides that the National Commissioner is the Registrar of Firearms.

Apart from section 6 of the Firearms Control Act, the collection of fingerprints and bodily samples is also regulated by section 113 of the Act.³³³ Section 37 of the CPA limits the taking of

³³³ Section 113 reads as follows:

(1) Any police official may without warrant take fingerprints, palmprints, footprints and bodily samples of a person or a group of persons or may cause any such prints or samples to be taken, if -

(a) there are reasonable grounds to suspect that that person or that one or more of the persons in that group has committed an offence punishable with imprisonment for a period of five years or longer; and

prints by police officials to persons arrested or convicted in the circumstances stipulated in section 37(1)(a). Section 113 of the Firearms Control Act in turn provides the police with the power to take prints and bodily samples from a person or a group of persons where such person or one or more persons in a group of persons are suspected of having committed an offence punishable with imprisonment for a period of five years or longer.

Explosives Act, 2003 (Act No. 15 of 2003)

Section 9 of the Explosives Act to a large extent mirrors section 113 of the Firearms Control Act.³³⁴

Correctional Services Act, 1998 (Act No. 111 of 1998): Regulations

(b) there are reasonable grounds to believe that the prints or samples or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of the persons as a possible perpetrator of the offence.

(2) The person who has control over prints or samples taken in terms of this section –

(a) may examine them for purposes of the investigation of the relevant offence or cause them to be so examined; and

(b) must immediately destroy them when it is clear that they will not be of value as evidence.

(3) Bodily samples to be taken from the body of a person, may only be taken by a registered medical practitioner or a registered nurse.

(4) A police official may do such tests, or cause such tests to be done, as may be necessary to determine whether a person suspected of having handled or discharged a firearm has indeed handled or discharged a firearm.

³³⁴ Section 9 is repeated below with the wording that distinguishes it from the Firearms Control Act indicated in italics:

“(1) Any police official may without warrant take fingerprints, palmprints, footprints and bodily samples of a person or a group of persons or may cause any such prints or samples to be taken, if there are reasonable grounds to –

(a) suspect that the person or that one or more of the persons in that group has committed an offence punishable with imprisonment for a period of five years or longer *in terms of this Act*; and

(b) believe that the prints or samples or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of the persons as possible perpetrators of the offence.

(2) The person who has control over prints or samples taken in terms of this section –

(a) may examine them for the purposes of the investigation of the relevant offence or cause them to be so examined; and

(b) must immediately destroy them when it is clear that they will not be of value as evidence.

(3) Bodily samples to be taken from the body of a person, may only be taken by a registered medical practitioner or a registered nurse.

(4) A police official may do such tests, or cause such tests to be done, as may be necessary to determine whether a person suspected of having handled or *detonated an explosive* has indeed handled or *detonated an explosive*.”

Regulation 17 of the Correctional Services Regulations deals with identification of prisoners and from a reading of this item it is clear that the taking of fingerprints as well as photographs or the recording of distinctive marks of a prisoner is not compulsory. Regulation 17 reads as follows:

- (1) The name, age, height, mass, full address, distinctive marks of a prisoner and other particulars as may be required must be recorded in the manner prescribed by Order.
- (2) If required the fingerprints and photographs of a prisoner must be taken, as prescribed by Order

Criminal Procedure Law³³⁶**Article 326.**

When the crime is prosecuted has left traces or elements of their commission, the examining magistrate or in lieu thereof the collected and retained for the trial if possible, proceeding to effect a visual inspection and description of everything that may be linked to the existence and nature of the act.

To this end cars will enter in the description of the crime scene, the site and state who are the objects in it are, the terrain or situation of the rooms and all other details that can be used both for the prosecution and the defense.

When you were to indicate the existence of traces or relics whose biological analysis might help to clarify the facts under investigation, the Coroner shall take or order the judicial police or the coroner to take the necessary measures for the collection, custody and examination of those samples is tested in conditions that ensure their authenticity, without prejudice to Article 282.

Article 363.

Courts ordered the practice of chemical analysis only where they are deemed absolutely essential for the necessary legal research and the proper administration of justice.

Provided that accredited proper circumstances, the Coroner may decide at a reasoned decision, obtaining biological samples from the suspect which are essential to determining their DNA profile. To this end, decide to practice those acts of inspection, survey or body intervention that are appropriate to the principles of proportionality and reasonableness.

Law 15/1999 on Protection of Personal Data³³⁷**Article 7. Sensitive data.**

1. In accordance with the provisions of paragraph 2 of Article 16 of the Constitution, no person shall be compelled to testify about his ideology, religion or belief.

When on these data is appropriate to seek the consent referred to the next section, will warn the person concerned about their right not to lend.

2. Only with the express written consent of the person concerned may be processed personal data revealing the ideology, trade union membership, religion and belief. Exceptions are files maintained by the political parties, unions, churches, denominations or religious communities and associations, foundations and other nonprofit entities whose purpose is political,

³³⁵ E.U. 9445/3/06 at 8.

³³⁶ Criminal Procedures Act, BOE No. 260 of September 17, 1882 (Spain).

³³⁷ Organic Law No. 15/1999 of December 13 on the Protection of Personal Data, BOE No. 289, December 14, 1999 (Spain).

philosophical, religious or trade-in terms of their associated data or shall, without prejudice to the provision of such data always require the consent of the affected.

3. The personal data referring to racial origin, health and sex life can only be collected, processed and transferred when, for reasons of general interest, so provides a law or expressly consents affected.

4. Are prohibited files created with the sole purpose of storing personal data revealing the ideology, trade union membership, religion, creed, race or ethnic origin, or sexual preference.

5. The personal data relating to the commission of criminal or administrative violations may only be included in files of the competent public administrations in the circumstances envisaged in the respective regulatory standards.

6. Notwithstanding the preceding paragraphs may be processed personal data referred to in paragraphs 2 and 3 of this Article, if such treatment is necessary for the prevention or medical diagnosis, assisting care or treatment or management of health services, if such data processing is performed by a health professional subject to professional secrecy or by another person also subject to an equivalent obligation of secrecy.

They may also be processed data referred to above where processing is necessary to protect the vital interests of another person affected or in the event that the person concerned is physically or legally incapable of giving consent.

Article 22. Files of the Security Forces.

1. Files created by the Security Forces which contain personal data, having been collected for administrative purposes, must be subject to registration, shall be subject to general rules of this Law

2. The collection and processing for law enforcement purposes of personal data by the Security Forces without consent of those affected are limited to those cases and categories of data that are necessary to prevent a real danger to public safety or to the prosecution of criminal offenses and should be stored in specific files established for that purpose, to be categorized according to their degree of reliability.

3. The collection and processing by the Security Forces of the data, as referred to in paragraphs 2 and 3 of Article 7 may be made only in cases where it is absolutely necessary for the purposes of a specific investigation, without prejudice legality of administrative action or the obligation to settle the claims made in his case the interest attributable to the courts.

4. The personal data for law enforcement purposes will be canceled when not needed for the investigation that led to their storage.

To this end, particular the age of the affected and the nature of the stored data, the need to maintain the data until the completion of a particular investigation or proceeding, the final judicial decision, especially the acquittal, pardon, rehabilitation and prescribing responsibility.

The legislation concerning the national DNA database of DNA profiles is found in Code of Judicial Procedure, Chapter 28, Article 12-13 and in the Police Data Act (1998:622), Article 22-28^{338,339}

Persons serving a prison sentence of 4 years or more, suspects charged of an offence that could lead to a prison sentence of 4 years or more (approval of prosecutor is required), and all crime scene stains³⁴⁰

There are no restrictions to the entry of DNA profiles that are derived from unidentified crime scene stains. The DNA profiles of crime suspects can be entered into the database when this penalty is in proportion to the prison sentence they may have to serve. The DNA profiles of convicted offenders can be entered into the database when they are condemned to another sentence than a monetary one.

The police have the authority to collect DNA samples from crime suspects and unidentified crime scene stains, but not from convicted offenders. The taking of a DNA sample from a minor is not allowed. The taking of a DNA sample from mentally ill persons is allowed when they are suspected of a crime.

Convicted persons' profiles are kept for twenty years after their entry for individuals sentenced to no more than six years, thirty years for individuals sentenced to more than six years, or at most twenty years after the individual's death; suspects' profiles are removed upon acquittal and crime scene stains are deleted after twelve, twenty, or eighty years depending on the severity of the underlying offense³⁴¹

The DNA profiles that are derived from unidentified crime scene stains have to be removed from the database when a match is made, when the crime is solved in a different way than by DNA profiling or, depending on the severity of the crime, after fifteen or thirteen years. The DNA

³³⁸ E.U. 9445/1/06 at 8.

³³⁹ The DNA profiles of persons convicted of serious crimes against a person's life or health, personal integrity or security or crimes involving public danger, are inserted in our national DNA database if the crime can lead to an imprisonment for more than two years. The database only includes DNA profiles regarding the identity.

³⁴⁰ See EU Current Practices at 77.

³⁴¹ See EU Current Practices at 77-78.

profiles of crime suspects have to be removed upon acquittal. The DNA profiles of convicted offenders have to be removed ten years after the passing of their sentence.

Have to be destroyed twenty years after their creation for individuals sentenced to no more than six years, thirty years for individuals sentenced to more than six years, or at most twenty years after the individual's death; suspects' samples must be destroyed upon their acquittal³⁴²

The DNA samples of crime suspects and convicted offenders have to be destroyed as soon as possible and can in any case no longer be retained than six months after the DNA profiles have been created.

National Laboratory of Forensic Science. The National Police Board is responsible for the database.

The database managers and the DNA scientists of the Swedish National Laboratory of Forensic Science have access to all information that is contained in the database. DNA profiles can be exchanged with the other EU Member States through Interpol. It is an Oracle database in combination with CODIS.

³⁴² See EU Current Practices at 78.

DNA-Profil-Gesetz³⁴³

DNA-Profil-Verordnung³⁴⁴

DNA-Analyselabor-Verordnung³⁴⁵

Recording of DNA profiles from:

- Persons who are suspected as perpetrators or participants of a crime or offense
- persons convicted
- Dead People
- Traces
- unidentified persons living or dead
- biological materials, the missing

Persons can be assigned

- relatives of dead or missing persons who are identified outside of the criminal justice process

Not included are

The DNA profiles of:

- victims identified
- crime scene people whose traces of offenders must be distinguished
- Persons who have been excluded in a mass examination as perpetrators

³⁴³ DNA-Profil-Gesetz [DNA Profile Law], SR 363 (Swis).

³⁴⁴ DNA-Profil-Verordnung, [DNA Profile Regulations] December 4, 2004 SR 363.1 (Swis.)

³⁴⁵ DNA-Analyselabor-Verordnung [DNA Laboratory Analysis Regulation], June 25, 2005, SR 363.11(Swis.)

National Forensic DNA Databases

- suspected persons, has shown to have been that they can be excluded as the perpetrator of the crime or offense in question
- Persons who were involved in a process that has been set

Offenses:

- crime or offense

Police and Criminal Evidence Act (PACE) 1984 and amendments to PACE : Criminal Justice and Public Order Act (CJPOA) 1994;Criminal Evidence.

(Amendment) Act 1997;Criminal Justice and Police Act (CJPA) 2001;Criminal Justice Act (CJA) 2003. Changes in the Data Protection Act (DPA) 1998, the Human Rights Act (HRA) 1998 and case law.³⁴⁶

Persons convicted of any recordable offence, arrested for any recordable offense, and all crime scene stains³⁴⁷

For Scotland: Persons convicted of any recordable offence, arrested for any recordable offense, and all crime scene stains³⁴⁸

England & Wales: The Justice and Public Order Act 1994 allows for the entry of the DNA profiles of all individuals who are arrested of any recordable offence or who are convicted of such an offence. All DNA profiles that are derived from crime scene stains are also stored in the NDNAD.

Scotland: The Criminal Procedure (Scotland) Act 1995 allows for the entry of the DNA profiles of those arrested of any recordable offence or who are convicted of such an offence. All DNA profiles that are derived from unidentified crime scene stains are also stored in the database.

England & Wales: Whereas the Police and Criminal Evidence Act 1984 (PACE) allowed for the coercive taking of ‘non-intimate samples’ such as hair shafts, the Justice and Public Order Act 1994 (JPOA) changed the definition of ‘non-intimate samples’ to include buccal swabs by which police sampling powers were seriously extended.³⁴⁹ This provision applies to both crime

³⁴⁶ E.U. 9445/1/06 at 9.

³⁴⁷ See EU Current Practices at 80-81.

³⁴⁸ See EU Current Practices at 81-83.

³⁴⁹ JPOA (1994), § 58.

suspects and convicted offenders who are arrested or convicted of any recordable offence.³⁵⁰

The police are allowed to take a DNA sample from minors who have reached the age of ten and from mentally ill persons. There are no restrictions to the collection of crime scene samples.

Scotland: A constable or a police custody and security officer at a constable's direction can collect a mouth swab from those arrested of any recordable offence.³⁵¹ They may use reasonable force in exercising this power.³⁵² A constable or a police custody and security officer at a constable's direction can also coercively collect a mouth swab from those convicted of any recordable offence.³⁵³ They are allowed to take a DNA sample from minors who have reached the age of ten and from mentally ill persons. There are no restrictions to the collection of unidentified crime scene samples.

Convicted persons' and suspects' profiles are retained indefinitely and crime scene stains are kept until they have been identified³⁵⁴

For Scotland: Convicted persons' profiles are retained indefinitely, suspects' profiles are retained until the underlying proceeding is abandoned or the individual is acquitted, and crime scene stains are kept until they have been identified³⁵⁵

England & Wales: The Criminal Justice and Police Act 2001 (CJPA) allows for the indefinite retention of the DNA profiles of both crime suspects and convicted offenders who are arrested or convicted of any recordable offence.³⁵⁶ This provision also applies to crime suspects who are subsequently acquitted or freed of charges. The DNA profiles which are derived from unidentified crime scene stains are stored in the database until a match is found.

³⁵⁰ Id. at § 55.

³⁵¹ Criminal Justice (Scotland) Act 2003, Art. 55, § 2.

³⁵² Criminal Procedure (Scotland) Act 1995, Art. 18, § 7.

³⁵³ Criminal Justice (Scotland) Act 2003, Art. 55, § 3.

³⁵⁴ See EU Current Practices at 81.

³⁵⁵ See EU Current Practices at 83.

³⁵⁶ CJPA (2001), § 82.

Scotland: The DNA profiles of those who are arrested of any recordable offence have to be removed from the database as soon as possible following the decision not to institute criminal proceedings against the person concerned or upon acquittal.³⁵⁷ The DNA profiles of those convicted of any recordable offence can be retained indefinitely. The DNA profiles which are derived from unidentified crime scene stains are stored in the database until they are identified.

All samples are retained indefinitely³⁵⁸

For Scotland: Convicted persons' samples are retained indefinitely, but suspects' samples must be destroyed upon their acquittal or when no criminal proceedings are initiated³⁵⁹

England & Wales: The CIPA 2001 allows for the indefinite retention of the DNA samples of both crime suspects and convicted offenders who are arrested or convicted of any recordable offence.³⁶⁰ This provision also applies to crime suspect who are subsequently acquitted or freed of charges.

Scotland: The DNA samples of those who are convicted of any recordable offence can be retained indefinitely. Those taken from persons who are arrested of any recordable offence have to be destroyed as soon as possible following the decision not to institute criminal proceedings against the person concerned or upon acquittal.³⁶¹

The Forensic Science Service, an Executive Designated staff employed by the Custodian Security clearance to Counter Terrorism Kingdom Agency of the Home Office, has been responsible for the management of the National DNA Database since 1995, through the office of its Chief Scientist as Custodian of the Database, under a Memorandum of Understanding between the FSS and the Association of Chief Police Officers, revised in 2000, 2003 and again in

³⁵⁷ Criminal Procedure (Scotland) Act 1995, Art. 18, § 3.

³⁵⁸ See EU Current Practices at 81.

³⁵⁹ See EU Current Practices at 83.

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³⁶¹ Criminal Procedure (Scotland) Act 1995, Art. 18, § 3.

2005, and the oversight of the National DNA Database Board, chaired by ACPO. These arrangements are currently under review. From July 2005, the Custodianship will transfer to the Home Office, prior to the FSS moving to a new status as a Government owned Company as a precursor to its eventually being private sector classified.

England & Wales: Designated staff members of the FSS and IT specialists have access to information such as individual's names, date of birth, ethnic appearance code, gender code, laboratory responsible for the sampling, sample and test type, offence code, etc. The legal basis for the international exchange of DNA profiles is the CIPA 2001.³⁶² A request for information must be submitted through Interpol. Interpol London decides whether the requested information is released or not. [151] *Id.*, section 81.

Scotland: Although they can largely develop their own policies regarding the treatment of profiles and samples which are collected in the course of criminal investigations, it is not entirely correct to consider the databases of Scotland and England & Wales as two separate entities.³⁶³ As Scotland exports all its profiles and unidentified crime scene stains to the NDNAD, the latter in fact contains nearly all UK profiles. As Scotland does not retain the profiles of suspects who are acquitted and against whom no criminal proceedings are instituted, these are the only profiles that stay in the custody of the Scottish police.

Oracle platform with Loader (input) and Match reporting database (repository for match information) It is an Oracle 9i database. Profiles are loaded electronically but from CSV files submitted as a batch rather than messaging.

All new profiles added to the Database are automatically searched on loading against all profiles held. The search regime uses 4 SGM discriminator loci to identify a matching sub-set which is then searched again using the remaining SGM Plus loci. Only exact matches between Subject/crime scene and crime scene/crime scene are reported immediately (failed or rare alleles are treated as wild 'cards'). Subject/subject matches are reported periodically.

³⁶² CIPA (2001), § 81.

³⁶³ P. Johnson & R. Williams, *DNA and crime investigation: Scotland and the "UK National DNA Database,"* 10 SCOTTISH J. CRIM. JUSTICE STDS. 74 (2004).

One-off ‘snapshot’ speculative searches of sample profiles that do not meet the criteria for loading to the Database are also carried out using the same search regime. ‘Familial searches’ are also carried out to help identify potential relatives of offenders whose profiles are not on the Database. A monthly search is also carried out for ‘near matches’ that differ by only 1 allele; these are then investigated to see if there has been an error in the profiling.

The National DNA Database of the United Kingdom (UK) was established in 1995 as an intelligence database, but in the absence of both a national strategy and funding, the build-up of offender profiles on the Database was random. It became clear to authorities in the late 1990’s that as the Database began to grow, the number of DNA matches reported also began to increase, illustrating the potential intelligence value of the Database. In 2000, England and Wales made a commitment to expand their National DNA Database in order to provide police with more useful DNA intelligence, particularly in volume crime (such as property crimes), by linking DNA evidence found at crime scenes to offenders’ DNA on the Database.³⁶⁴ As a result of the DNA Expansion Programme, the UK now has the largest DNA database of any country and the largest proportion of its population’s DNA held on a database.

The DNA Expansion Programme began in April 2000 with the aim of providing specific funding to police forces in England and Wales to enable the taking of a DNA sample from all known offenders in order to accelerate the build-up of offender profiles on the National DNA Database. It also provided funding to enable the collection of more DNA material left by offenders at crime scenes, particularly volume crime scenes (burglary and vehicle crime) where police clear-up rates were lower and resource limitations in the past had meant that DNA information was less likely to be collected. This was made possible through the dedication of additional funding to the Programme by the Government. Funding was allocated for additional forensic staff, vehicles and equipment to enable the police to attend to more crime scenes. The Programme increased

³⁶⁴ See “DNA Expansion Programme 2000-2005: Reporting achievement” – Forensic and Pathology Unit.

the number of forensic staff by 14% and in 2004/05 there was a total of just over 5000 forensic staff in forces in England and Wales. Forensic staff who attend to crime scenes do not only collect DNA samples, but also collect fingerprints, shoe marks etc.

It is important to note that the aim of the National DNA Database is to serve as an intelligence tool to the police. The Programme developed through a number of stages, which have been accompanied by key legislative changes. In brief the steps taken in England and Wales can be summarized as follows:

1. At the outset the main target was to hold a DNA profile for all active offenders on the National DNA Database by March 2004. The police were empowered to take a DNA sample from any person charged with or reported for a recordable offence. Recordable offences are offences that have to be recorded on the Police National Computer to form part of a person's criminal record, and include most offences other than traffic offences. It was estimated in early 2000 that the target of all active offenders would involve taking samples from between 2.3 million and 2.65 million individuals. The target was achieved and by April 2004 there were 2.5 million profiles on the Database.
2. Before 2001, the law required that if a person was not prosecuted or was acquitted, their DNA sample must be destroyed and their DNA profile removed from the Database. Over a quarter of a million profiles were removed from the Database prior to 2001 to comply with this. In May 2001, the law was changed to allow profiles to be retained. (First legislative change) This followed two cases which demonstrated the potential value of the retention of profiles on the Database.³⁶⁵ Since the legal change that took place in 2001, it is estimated that approximately 198 000 profiles that would previously have been removed have been retained on the Database.³⁶⁶ On 5 April 2004, new powers were introduced under the Criminal Justice Act

³⁶⁵The two cases were the overturning on appeal of the convictions of a rapist and a murderer despite DNA evidence that linked the defendants to the offences. The convictions were quashed by the Court of Appeal on the grounds that the DNA evidence should not have been admitted. The defendants had been identified through their DNA profiles being retained on the Database for earlier offences when they should have been removed. This caused considerable public outcry and the law was subsequently changed to allow profiles to be retained on the Database.

³⁶⁶ The DNA & Fingerprint Retention Project Team in 2005 reported that 43% of arrested persons are not proceeded against and from a sampling of arrestees against who no proceedings were instigated has yielded over 250 profiles of individuals that have been linked with crime scene samples, which included four murders, three rapes, six

2003 enabling police to take fingerprints and DNA samples from individuals who have been arrested on suspicion of committing a recordable offence. (Second legislative change) This legislative change enables the police to take without consent a non-intimate sample from a person in police detention who has been arrested for a recordable offence, in addition to persons charged or reported for a recordable offence. Prior to this, the police could take fingerprints and DNA only from persons who had been charged with or reported for a recordable offence. A non-intimate sample is typically a mouth swab or a hair with the root attached thereto and such samples can be taken by the police without the presence of a medical practitioner.

What the above processes enabled the UK to do is four-fold:

- 1) Drastically increase the number of DNA profiles on the Database;
- 2) A 10% increase in crime scene visits over the first four years of the programme;
- 3) A significant increase in potential DNA material retrieved at crime scenes;
- 4) An estimated 75% increase in DNA suspect-to-crime scene matches.³⁶⁷

The impact recorded by the UK as a result of their DNA Expansion Programme are the following:

- Quadrupled detections through DNA.
- Enhanced capability to detect serious crimes – on average the Database provides the police with around 3000 matches each month.
- Ability to solve serious crimes committed – serious offenders are often detected and caught because they are picked up and DNA sampled by the police at a later date for a relatively minor offence.
- DNA helps eliminating innocent persons from criminal investigations. In the UK they have a separate Database with the DNA of police investigators who are potentially capable of contaminating the crime scene of material retrieved from the crime scene. It is a condition of service for personnel to give a DNA sample towards the Police Elimination Database.

robberies and 98 burglary offences. (page 7 “DNA Expansion Programme 2000-2005: Reporting achievement” – Forensic and Pathology Unit).

³⁶⁷ See “DNA Expansion Programme 2000-2005: Reporting achievement” – Forensic and Pathology Unit at page 4.

- DNA scene-to-scene matches help identify patterns of criminal behaviour that may help solve past, existing and future crimes.
- Volume crime (burglaries and offences involving vehicles): Clear-up rates for burglaries and offences involving vehicles were low in the UK. Analysis shows that the proportion of DNA detections is much higher in respect of these volume crime categories, where police clear-up rates are historically lower and where an inability to change the position was for a long time a cause of public anxiety. (Where the overall domestic burglary detection rate was 16% the rate where DNA is available rises to 41%).³⁶⁸

Plea bargains increase when suspects are confronted with DNA evidence.

[UPDATE FOR MARPER]

³⁶⁸ At page 16 DNA Expansion Programme 2000-2005: Reporting achievement” – Forensic and Pathology Unit.

Approved Regulations on the Operation of the Ministry of Internal Affairs Criminal Records Services³⁶⁹

³⁶⁹ Про затвердження Інструкції з організації функціонування криміналістичних обліків експертної служби МВС [Approved Regulations on the Operation of the Ministry of Internal Affairs Criminal Records Services], (2009) No. 963/16979, at §§ 2.12 to 2.12.9 (Ukr.) (Register of Human Genetic Evidence) (“Облік генетичних ознак людини”). The regulations provide: **NO COMPREHENSIBLE TRANSLATION AVAILABLE**

2.12. Облік генетичних ознак людини

2.12.1. Автоматизований облік генетичних ознак людини функціонує на центральному та обласних рівнях.

2.12.2. Облік складається з оперативно-пошукових колекцій, які ведуться відповідно в ДНДЕКЦ та НДЕКЦ.

2.12.3. Оперативно-пошукові колекції формуються з ДНК-профілів:

осіб, які підозрюються або звинувачуються в учиненні злочинів, узятих під варту, засуджених у випадку їх добровільної згоди;

біологічних слідів, вилучених при ОМП, у тому числі за фактами безвісного зникнення осіб, проведення інших слідчих дій та оперативно-розшукових заходів;

невпізнаних трупів.

2.12.4. Центральна оперативно-пошукова колекція ведеться в ДНДЕКЦ та формується з ДНК-профілів осіб, які підозрюються або звинувачуються в учиненні злочинів, узятих під варту, засуджених; біологічних слідів, вилучених при ОМП, проведенні слідчих дій та оперативно-розшукових заходів; невідомі трупів. ДНК-профілі отримуються під час експертних досліджень у ДНДЕКЦ, НДЕКЦ, Державній установі Головного бюро судово-медичної експертизи МОЗ, Кримській республіканській установі "Бюро судово-медичної експертизи", бюро судово-медичної експертизи Київської та Севастопольської міських, обласних державних адміністрацій (далі - бюро СМЕ).

2.12.5. Обласні оперативно-пошукові колекції ведуться в НДЕКЦ та формуються з ДНК-профілів осіб, які підозрюються або звинувачуються в учиненні злочинів, узятих під варту, засуджених, у випадках їх добровільної згоди; біологічних слідів, вилучених при ОМП, проведенні інших слідчих дій та оперативно-розшукових заходів; невідомі трупів. ДНК-профілі отримуються під час експертних досліджень у НДЕКЦ, бюро СМЕ.

2.12.6. Обліку підлягають ДНК-профілі, отримані за допомогою генетичних аналізаторів та визначені за рядом стандартних систем маркерів (STR-локусів), які є єдиними для експертних лабораторій відповідно до рекомендацій Європейської мережі науково-криміналістичних установ (ENFSI).

Після встановлення ДНК-профілів, визначених підпунктом 2.12.3 цієї Інструкції, упродовж триденного терміну заповнюються реєстраційна картка ДНК-профілю (біологічного сліду, вилученого під час огляду місця вчинення злочину або проведення інших слідчих дій та оперативно-розшукових заходів; невідомі трупа; біологічного сліду безвісно зниклої особи, зразка підозрюваного, обвинуваченого, потерпілого) (додаток 28), які направляються до колекцій відповідно до підпунктів 2.12.7, 2.12.8 цієї Інструкції.

2.12.7. Експертами НДЕКЦ після отримання під час проведення експертних досліджень ДНК-профілів, зазначених у підпункті 2.12.3 цієї Інструкції, проводиться їх перевірка за обласними колекціями за територіальним принципом. При отриманні негативного

результату під час перевірки заповнюються реєстраційні картки у двох примірниках, один з яких ставиться на облік в обласній колекції, а другий надсилається до ДНДЕКЦ для проведення перевірки та поставлення на облік у центральній колекції.

Експертами ДНДЕКЦ після отримання під час проведення експертних досліджень ДНК-профілів, зазначених у підпункті 2.12.3 цієї Інструкції, проводиться їх перевірка за центральною колекцією. При отриманні під час перевірки негативного результату заповнюється реєстраційна картка, яка ставиться на облік у центральній колекції.

2.12.8. Експертами бюро СМЕ після отримання під час проведення експертних досліджень ДНК-профілів, зазначених у підпункті 2.12.3 цієї Інструкції, заповнюються реєстраційні картки в одному примірнику, який надсилається за територіальним принципом до обласних колекцій НДЕКЦ. При отриманні негативного результату під час перевірки виготовляється копія реєстраційної картки, яка ставиться на облік в обласній колекції, а оригінал направляється до ДНДЕКЦ для проведення перевірки та поставлення на облік у центральній колекції.

У разі отримання експертами Державної установи Головного бюро судово-медичної експертизи МОЗ після проведення експертних досліджень ДНК-профілів, зазначених у підпункті 2.12.3 цієї Інструкції, ними заповнюються реєстраційні картки в одному примірнику, який надсилається до ДНДЕКЦ для проведення перевірки та поставлення на облік у центральній колекції.

2.12.9. ДНК-профіль може бути вилучений з колекції за рішенням суду.

Everyone (someday).

United States

The Federal Bureau of Investigation's (FBI) Combined DNA Index System program (CODIS) enables federal, state and local laboratories to store and compare DNA profiles electronically and thereby link serial crimes to each other and identify suspects by matching DNA from crime scenes to convicted offenders or arrestees (where state legislation allows this). All 50 states and the FBI now collect DNA samples, retain the profiles generated from those samples in the databases, and compare the database entries against DNA profiles of biological evidence. There are obviously differences amongst the states as to collection criteria, sample retention and removal of entries from the databases. It is impossible to give a complete overview of the position in each state in this paper and the aim is merely to briefly summarise the contents of the main pieces of legislation and to highlight trends amongst states.

Legislation:

- **The DNA Identification Act, 1994**, allows for DNA identification records to be kept of:
(a) Persons convicted of crimes, this will vary from State to State in accordance with the DNA database laws of each State; (b) DNA samples recovered from crime scenes; (c) DNA samples recovered from unidentified human remains; and (d) DNA samples voluntarily contributed from relatives of missing persons. (Refer to See 42 U.S.C.S. §14132(a).).
- **The Justice for All Act, 2004**, allows for the retention in the National DNA Index System (NDIS) of DNA profiles from persons who have been charged in an indictment, even if the charges are eventually dropped or not pursued. The Act affects the qualifying offences for entry onto the National DNA database. Previously these were limited to sexual offences and other serious violent crimes, but have been amended to include "any felony". In terms of the Act, DNA profiles may not be uploaded to the NDIS if: (a) The arrestee has not been charged; or (b) DNA samples have been submitted voluntarily for the purposes of elimination from a crime sample.
- **The Violence Against Women Act, 2005**, allows for the uploading of an arrestee's DNA profile into the NDIS at the same time that their fingerprints are taken and uploaded onto the national fingerprint database. Previously DNA could not be uploaded until the arrestee was charged or indicted. The Act removes the burden from the State to remove an arrestee sample

from the NDIS if the arrestee was later acquitted or if the charges were dismissed. The burden shifts onto the arrestee, who will be required to file a certified copy of a final court order establishing that all indexable charges have been dismissed, resulted in acquittal or that no charges were filed. The Act allows the Federal Government to take and retain DNA samples from Federal arrestees and from non-U.S. citizens or permanent residents who are detained under Federal authority. The Act gives the Attorney General the authority to issue regulations requiring the collection of such DNA profiles including requiring other Federal agencies to collect these: e.g. immigration agencies.

Who must provide a sample:³⁷⁰

- Twelve states: Alaska, Arizona, California, Kansas, Louisiana, Minnesota, New Mexico, North Dakota, South Dakota, Tennessee, Texas and Virginia – now have laws authorizing arrestee sampling.
- All 50 states require that convicted sex offenders provide a DNA sample, and states are increasingly expanding these policies to include all felons or many serious felony offenders. To date (July 2008), 46 states require that all convicted felons provide a DNA sample to the state's database.
- Eleven states to date specify certain misdemeanors among those who must provide a sample.
- There are 28 states that include DNA from delinquent juveniles in the database, of these there are 12 states that restrict the scope of qualifying offences with regard to juveniles. For example, California provides that qualifying offences are the same for adult convicts and juvenile delinquents, but juvenile arrestees, unlike adults, are excluded from the database.

Retention of information and samples:³⁷¹

- Thirty-eight states contain statutes that detail expungement criteria and procedure. DNA samples and records are expunged upon a change in the disposition of the case in the convict's favor, provided that the offender has not been convicted of a separate qualifying offence. The

³⁷⁰ See <http://www.ncsl.org/programs/cj/dnadatabanks.htm> "State Laws on DNA Data Banks Qualifying Offenses, Others Who must provide sample" (July 2008).

³⁷¹ See Survey of State DNA Database Statutes (2004) available at www.aslme.org/dna_04/grid/guide.pdf.

state statutes differ, however, in the extent to which the disposition of the case must change before expungement proceedings begin. Some states only require that the defendant's conviction be reversed, whereas others require that the conviction be reversed and the case dismissed. Of the 38 statutes that detail the expungement procedure, 33 require the offender to initiate the process. Of these 33 it is only Texas that contains a statutory provision requiring the defendant to be advised after his acquittal of his right to expungement.

- The criteria for retention vary from immediate removal, if a sample is not used, to retention of a sample for at least 35 years, to permanent retention for certain specified offences.

In general, the statutes authorize use of DNA and the database for law enforcement purposes, and for purposes of maintaining and improving the database. However, in certain states the creation of population statistical databases, tools which allow for the statistical analysis and interpretation of anonymous DNA profiles collected from convicted offenders, are established. DNA databases in the US typically authorize certain uses of offender's genetic information and prohibit unauthorized uses and are therefore usually exempted from genetic privacy laws. The DNA statutes of the states also differ with regard to the criminal and civil liabilities provided therein for the misuse of the DNA database. Typically criminal penalties are imposed for: a) tampering with the DNA samples or records; b) improper entry of DNA samples and records into the database; c) improper access to and use of DNA samples and records; and d) improper disclosure of DNA samples and records. Only seven states provide for a private cause of action for individuals aggrieved by the misuse of the database and four states explicitly provide immunity from civil and / or criminal liability for misuse of the database.

National Status Reports Part II – Planned DNA Databases

I. Law on Point

Law on the State Police³⁷²

Article 103 of the Law on State Police provides the legal basis for the Albanian National DNA database.

II. Entry Criteria

Any person arrested or detained in any case can be compelled to provide a DNA sample.³⁷³

III. Sample Collection

Any police officer of or above the rank of Nënkomisar, or in an emergency the highest-ranking police officer present, can authorize the use of reasonable force to compel the taking of a DNA sample if the person arrested or detained rejects request.³⁷⁴

IV. Removal Criteria

If the DNA sample was taken for the purposes of identifying the arrestee/detainee, upon his subsequent identification the sample and any profile derived therefrom should be eliminated.³⁷⁵

The Director General of the Police has an obligation to eliminate any DNA sample and accompanying data in the event that the individual in question is subsequently declared innocent by a final court ruling. The statute is ambiguous as to whether this is supposed to happen automatically or if it requires the acquitted individual to petition to have his personal data destroyed.³⁷⁶

V. Sample Retention

With the exception of the removal provisions of Art. 103, §§ 5 and 8 (positive identification and acquittal), Albanian law is silent on whether any DNA sample or data derived therefrom must be destroyed. It follows that they may be kept indefinitely.³⁷⁷

³⁷² Për Policinë E Shtetit, LIGJ Nr. 9749, datë 4.6.2007 (hereinafter “PPeS”).

³⁷³ PPeS, Art. 103, §§ 3, 4.

³⁷⁴ PPeS, Art. 103, § 4.

³⁷⁵ PPeS, Art. 103, § 5.

³⁷⁶ PPeS, Art. 103, § 8.

³⁷⁷ PPeS, Art. 103.

VI. Database Access

Article 103, § 7 of the Law on the State Police requires that “for all persons arrested or detained, the State Police create a central bank with all the data collected [including] fingerprints, photographs, and DNA.”³⁷⁸ Albanian law makes no other reference to a centralized DNA database, nor who may or may not have access to it.

³⁷⁸ PPeS, Art. 103, § 7 (“Për të gjithë personat e arrestuar apo të ndaluar, Policia e Shtetit krijon një bankë qendrore me të gjitha të dhënat e mbledhura [përfshirë] shenjat e gishtave, fotografitë dhe ADN-në.”).

Algeria

According to INTERPOL, Algeria is actively working to implement a National DNA database.³⁷⁹ Nevertheless, no significant evidence of their activities has been found to date.

³⁷⁹ Personal communication with INTERPOL DNA Working Group.

Bahamas

According to INTERPOL, the Bahamas is actively working to implement a National DNA database.³⁸⁰ Nevertheless, no significant evidence of their activities has been found to date.

³⁸⁰ Personal communication with INTERPOL DNA Working Group.

Forensic Procedures and DNA Identification Act³⁸¹

The Barbados DNA database system is comprised of seven sub-databases: a crime scene DNA index, a missing persons index, an unknown deceased persons index, a serious offenders index, a volunteers (unlimited purposes) index, a volunteers (limited purposes) index, a suspects index. The “crime scene DNA index” is a database of DNA profiles derived from forensic material found at any place whether in or outside Barbados where a serious offence was, or is reasonably suspected of having been committed, on or within the body of a victim, or a person reasonably suspected of being a victim of a serious offence, on anything worn or carried by the victim when a serious offence was, or is reasonably suspected of having been committed, or on or within the body of anyone, on anything, or at any place, associated with the commission of a serious offence.³⁸² The “missing persons index” is a database of DNA profiles derived from forensic material of persons who are missing and volunteers who are relatives by blood of missing persons. The “unknown deceased persons index” is a database of DNA profiles derived from forensic material of deceased persons whose identities are unknown. The “serious offenders index” is a database of DNA profiles derived from forensic material taken from suspects who have been convicted of a serious offence.³⁸³

The “suspects index” is a database of DNA profiles derived from forensic material taken from suspects. A “suspect” means any of the following persons: a person suspected by a police officer, on reasonable grounds, to have committed an offence, a person charged with an offence, and a person who has been summoned to appear before a Court for an offence. The “volunteers (limited purposes) index” is a database of DNA profiles derived from forensic material taken from volunteers who, or whose parents or guardians have been informed that information obtained shall be used only for the purpose of a criminal investigation or any other purpose for which the DNA system may be used. The “volunteers (unlimited purposes) index” is a database of DNA profiles derived from material taken from volunteers who, or whose parents or

³⁸¹ [CITE CODIFIED FORM] (hereinafter “Barbados DNA Identification Act”)

³⁸² For the purposes of the present statute, “serious offence” means an indictable offence including an offence under the Road Traffic Act that is punishable on indictment an offence punishable by a term of more than 3 years imprisonment. Barbados DNA Identification Act, § 2.

³⁸³ Barbados DNA Identification Act, § 2, 64.

guardians, have been informed that information obtained may be used for the purpose of a criminal investigation or any other purpose for which the DNA database system may be used and from deceased persons whose identity is known.³⁸⁴

Samples may be coercively collected from any individual meeting the criteria of a suspect: a person suspected by a police officer, on reasonable grounds, to have committed an offence, a person charged with an offence, and a person who has been summoned to appear before a Court for an offence.³⁸⁵

Where a magistrate disallows an interim order for the carrying out of a forensic procedure, the magistrate shall order any forensic material obtained as a result of the carrying out of the procedure and a copy of the results of any analysis of that forensic material to be destroyed as soon as practicable after the disallowance. Where an order by a Court for the carrying out of a forensic procedure or the retention of forensic material states a period for which the material obtained as a result of the carrying out of the procedure may be retained, the material shall be destroyed as soon as practicable after the end of the period. Where a police officer obtained an order for the carrying out of a forensic procedure on a serious offender whose conviction was quashed after the making of the order, the Commissioner shall inform the Director of the quashed conviction and ensure that any forensic material obtained as a result of the carrying out of the procedure is destroyed by the Director as soon as practicable after the conviction is quashed.³⁸⁶

Where a proceeding for an offence to which the forensic material relates has not been instituted within one year after the material was taken or the proceeding has been discontinued, the material shall be destroyed by the Director as soon as it is practicable to do so unless a warrant for the apprehension of the suspect has been issued or the Court otherwise directs. Where forensic material has been taken from a person who is a suspect and the person is found to have committed an offence to which the forensic material relates but no conviction is recorded or the person is acquitted of an offence to which the forensic material relates and no action is brought in respect of the decision or acquittal, the forensic material shall be destroyed as soon as

³⁸⁴ Barbados DNA Identification Act, § 64.

³⁸⁵ Barbados DNA Identification Act, § 2, 31 (section 31 provides that “[a]n authorised person or a police officer who is authorised to carry out a forensic procedure on a person, may use such reasonable force as is necessary (a) to enable that procedure to be carried out; or (b) to prevent loss, destruction or contamination of any sample.”).

³⁸⁶ Barbados DNA Identification Act, §§ 59, 60.

practicable. Nevertheless, where an investigation into, or a proceeding against a person is pending in relation to another offence to which the material relates, the material may be retained. The Court may, on application by the Director of Public Prosecutions, extend for not longer than one year the period for which forensic material may be retained under this section, where the Court is satisfied that the extension is justified in the circumstances.³⁸⁷

³⁸⁷ Barbados DNA Identification Act, § 61.

CCP §§ 112, 113, 114, 115

Regulation on the Collection and Sampling of Biological Material for DNA analysis in Criminal Proceedings, Official Gazette No. 35/07

Draft Law on the Implementation of Results of DNA Analysis in Judicial Proceedings

I. Law on Point

II. Entry Criteria

III. Sample Collection

IV. Removal Criteria

V. Sample Retention

VI. Database Access

Analysis of the DNA can be done only institution that has the necessary expertise in terms of personnel and equipment to perform forensic DNA analysis for this kind of expertise.³⁸⁸

DNA analysis can be performed if it is necessary to determine the identity or the fact that I discovered traces of substances originating from the suspect or the accused or the injured party.³⁸⁹

In order to determine the identity of the suspect or accused with his body can take the cells to DNA analysis. Data obtained in this way can be used in other criminal proceedings against the same person.³⁹⁰

(1) All the analysis of DNA leading to the special register of the Ministry of Security of Bosnia and Herzegovina.

(2) Minister of Justice of Bosnia and Herzegovina passed the Law on the collection and sampling of biological material for DNA analysis in criminal proceedings, how to package the collected

³⁸⁸ Art. 112.

³⁸⁹ Art. 113.

³⁹⁰ Art. 114.

biological material, storage, processing and storage of samples and results of DNA analysis in Bosnia and Herzegovina.

(3) Protection of data obtained from the analysis of paragraph 1 this Article shall be regulated by special law.³⁹¹

³⁹¹ Art. 115.

Law No. 19970

Regulations of Law No. 19970

CCP §§ 198, 199, 199b

The Chilean System of National DNA Databases (*Sistema Nacional de Registros de AND*) (hereinafter “SNDD”) was legally established on October 6, 2004.³⁹² In principle, the SNDD is divided into five different databases, each containing the genetic profiles from a different source: (1) individuals convicted of certain serious crimes (Registro de Condenados); (2) individuals suspected of and/or charged with said serious crimes (Registro de Imputados); (3) unidentified biological material collected at crime scenes (Registro de Evidencias y Antecedentes); (4) victims of said serious crimes (Registro de Víctimas); and (5) individuals executed (“disappeared”) by Chile’s former authoritarian government and their potential relatives (Registro de Desaparecidos y sus Familiares).³⁹³ Due to insufficient institutional infrastructure and administrative regulation, the SNDD did not become operational until November 25, 2008.³⁹⁴ The SNDD operates using the CODIS software, donated by the FBI in accordance with a joint-cooperation agreement between Chile and the United States.³⁹⁵

The Offender Database (Registro de Condenados) contains the genetic profiles of individuals who have been convicted of certain crimes, listed in the statute establishing the database.³⁹⁶ In addition to these enumerated offences warranting inclusion in the SNDD, the law

³⁹² Ley N° 19.970, de 10 septiembre de 2004, D.O. de 06.10.2004 (“*Crea el Sistema Nacional de Registros de ADN*”) (Chile)

³⁹³ See supra note 392.

³⁹⁴ Press Release, Servicio Médico Legal, Ministro de Justicia Visitó Dependencias de Servicio Médico Legal [Minister of Justice visited the Forensic Medicine Service Units], Feb. 20, 2008, http://www.sml.cl/portal/index.php?option=com_content&task=view&id=52&Itemid=24 (describing the institutional preparations undertaken to accommodate the SNDD); Fiscal Nacional del Ministerio Público [Office of the Public Prosecutor], Orientaciones para la aplicación de la ley 19.970 que creó el Sistema Nacional de Registro de AND [Guidelines for implementation of the law 19,970 which created the National Register AND], Document No. 017 (Jan. 7, 2005) (noting that the operation of the SNDD was deferred until the government promulgated regulations governing its implementation and operation); see also Drecho 634 de 10 septiembre de 2008 (adopting regulations governing SDNN).

³⁹⁵ CITE

³⁹⁶ Art. 17, Ley N° 19.970, de 10 septiembre de 2004, establishes conviction of any of the following crimes as grounds for inclusion within the Offender Database: Código Penal, Libro Segundo, Title VIII, §§ 1 and 2 (murder, infanticide) and Title VII, §§ 1, 5, 6 and 7 (abortion, rape, statutory rape and other sexual crimes); also Código Penal §§ 141 (kidnapping), 142 (child abduction), 150A & 150B (torture), 296 (“threats”), 313 (manufacture or sale of adulterated or deteriorated medicinal substances), 315 (poisoning a public water supply), 316 (spreading of

provides that the court, either at the request of the prosecutor or upon its own initiative, may order the genetic profile of anyone convicted of any crime be included in the Convicted Database.³⁹⁷ Profiles included in this database are retained for a period of thirty years, irrespective of the offender's intervening death, parole, or release.³⁹⁸

The Defendant/Suspect Database (Registro de Imputados) includes the genetic profiles of individuals who have been charged with any crimes if convicted of which would warrant their inclusion in the Convicts Database.³⁹⁹ In the case of the Offender Database and the Defendant/Suspect Database, individuals are compelled to provide genetic samples for analysis. The law is ambiguous as to how the samples are to be collected or what level of suspicion is required before a sample may be obtained.⁴⁰⁰ The law creating the SNDD both references preexisting portions of the Code of Criminal Procedure covering bodily examinations of suspects, but also amends other sections of that same code.⁴⁰¹ The genetic profiles in the Defendant/Suspect Database are to be either deleted or transferred to the Offender database, depending on the outcome of the associated criminal process.⁴⁰² The Evidence Database (Registro de Evidencias y Antecedentes) is comprised of genetic profiles that have been obtained in the course of any criminal investigation.⁴⁰³ These profiles are kept for thirty years or until they are identified.⁴⁰⁴

Unlike either the Offender or the Defendant/Suspect Databases, the law does not compel any victim to provide a genetic sample for inclusion in the Victims Database.⁴⁰⁵ Victims have an affirmative right to be informed of their right to refuse to be included in the Victims Database.⁴⁰⁶ Furthermore, any genetic evidence collected that is known to belong to a victim cannot be

pathogens), 348 (child neglect resulting in serious injury or death), 352 (neglect of the poor), 395 (castration), 396 (mutilation), 397 (causing serious injury), 401 (causing less serious injuries in aggravating circumstances), 403 (sending explosives in the mail), 433 (second degree robbery by violence and intimidation), 436 (first degree robbery by violence and intimidation), 440 (home burglary), 474 to 476 (arson), and 480 (mayhem).

³⁹⁷ See supra note 392, § 17(c) (providing that a competent court, upon an individual's conviction for any crime, in consideration of the personal background of the individual, and the nature, methods and motivation behind the crime, may compel that individual to provide a genetic sample from which a genetic profile will be generated and included in the SNDD)

³⁹⁸ See supra note 392.

³⁹⁹ See supra note 396.

⁴⁰⁰ CITE

⁴⁰¹ CITE

⁴⁰² See supra note 392.

⁴⁰³ See supra note 392.

⁴⁰⁴ See supra note 392.

⁴⁰⁵ See supra note 392.

⁴⁰⁶ Id.

analyzed until the prosecutor has obtained that victim's express permission.⁴⁰⁷ The profiles of victims who opt for inclusion in the Victims Database are kept until the perpetrator(s) of the crime at hand are identified.⁴⁰⁸

Finally, the Database of the Disappeared (Registro de Desaparecidos y sus Familiares) contains the genetic profiles of unidentified human remains or biological material from persons presumably "disappeared."⁴⁰⁹ It also includes genetic profiles volunteered by persons believing themselves to be related to the "disappeared."⁴¹⁰ These profiles are kept until they are identified.⁴¹¹

1. In April 2008 the police of Concepción collected DNA samples from two thousand public school children under age twelve without cause or parental consent. This action was ordered by the mayor of Concepción, Jacqueline van Rysselberghe, citing merely "child safety" as grounds.⁴¹²

2. The Chilean government has adopted a "prioritized" DNA sampling policy, by which it has specifically targeted incarcerated individuals of the Mapuche people. These individuals, considered political prisoners by the Mapuche—a native minority within Chile with a history of resistance to Chilean claims to their land—have been singled out for inclusion in the Offenders Database on the basis of their ethnicity.⁴¹³

⁴⁰⁷ Id.

⁴⁰⁸ Id.

⁴⁰⁹ Id.

⁴¹⁰ Id.

⁴¹¹ Id.

⁴¹² Mauricio Becerra & Margaux Collet, *ADN: El Estado Va por tus Genes* [DNA: The State Goes for your Genes], *El Ciudadano*, Nov. 6, 2008.

⁴¹³ Pedro Cayuqueo, *Gobierno Chileno Impulsa Registro de ADN de Presos Políticos Mapuches* [Chilean government promotes DNA register Mapuche political prisoners], available at <http://www.alainet.org/active/28694> (Jan. 28, 2009); Pedro Cayuqueo, *Mapuches Interponen Recurso de Protección contra Gendarmería por Registro de ADN de Líder Recluido* [Mapuche Seek Protection Against Police Efforts to Obtain DNA from their Imprisoned Leader], *El Ciudadano*, Feb. 7, 2009.

Prior to the introduction of DNA analysis as a means of determining paternity, Costa Rica utilized the significantly less accurate “blood group” method in cases of disputed parentage.⁴¹⁴ When genetic technology became available in Costa Rica, the laws and regulations that had been enacted to accommodate the outdated technology⁴¹⁵ were applied to the government’s applications of DNA analysis.⁴¹⁶

Between 1992 and 1993, acting on the advice of the scientific community, the Judiciary initiated the restructuring (both administratively and physically) necessary to allow forensic DNA analysis in criminal investigations and trials.⁴¹⁷ Around the same time, the Research Center for Cellular and Molecular Biology at the University of Costa Rica began performing DNA analyses (specifically, deriving so-called DNA “fingerprints” or profiles).⁴¹⁸ Numerous profiles produced by the University’s genetic analyses were later admitted as evidence in Costa Rican courts.⁴¹⁹ While the bulk of the University’s work focused on paternity cases, they the government in criminal matters as well.⁴²⁰

Beginning in 1995, the government undertook a program to establish and equip a genetics laboratory under the auspices of Department of Judicial Investigation (el Organismo de Investigación Judicial) (hereinafter “OIJ”).⁴²¹ By the end of 1997, the Forensics Genetic Unit (Unidad Genética Forense) (hereinafter “UGF”) of the OIJ’s Department of Biochemistry (Sección de Bioquímica) was fully operational.⁴²² Like the University’s laboratory, the UGF assisted the Court in cases of disputed paternity as well as aided the OIJ in the course of criminal investigations.⁴²³

⁴¹⁴ Ana Isabel Morales, Bernal Morera, & Gerardo Jiménez-Arche, La implementación forense de la tecnología del ADN en Costa Rica: Un análisis retrospectivo, 52 Rev. Biol. Trop. 695, 697 (2004).

⁴¹⁵ e.g. Código de Familia, Ley Orgánica del Organismo de Investigación Judicial, Código Procesal Penal [GET PROPER CITES]

⁴¹⁶ See supra note 414, at 697.

⁴¹⁷ See supra note 414, at 697.

⁴¹⁸ See supra note 414, at 697-98; Angela Avalos Rodríguez, ¿Cómo demostrar la paternidad?, La Nación (Costa Rica), July 6, 1997.

⁴¹⁹ See supra note 414, at 697-98.

⁴²⁰ See supra note 414, at 968; *see also* J.F. Cordero, La ciencia al uxilio, La Nación (Costa Rica), July 31, 1995, at 10A; A. Marrero, Existía relación entre Ciro Monge, Karen, “Pimpo” y “41,” Diario Extra (Costa Rica), Aug. 10, 1995, at 8A.

⁴²¹ See supra note 414, at 698.

⁴²² See supra note 414, at 702.

⁴²³ See supra note 414, at 698.

Compared to the forensic technology formerly used by the Court and OIJ, the genetic analysis conducted by the UGF increased the certainty in paternity cases from 75 per cent to 98.8 per cent and in cases of identity inclusion/exclusion from 13.3 per cent to over 99 per cent.⁴²⁴ In addition to work for the Court and OIJ, the UGF undertook a thorough study of the genetic makeup of the Costa Rican population.⁴²⁵ Unlike previous population genetic analysis in Costa Rica, the UGF study comported with internationally-recognized standards of procedure and technology.⁴²⁶ As such, it was the first to be acknowledged by the international forensic science community.⁴²⁷ What's more, it provided the basis from which UGF produced identification statistics in criminal investigations and trials.⁴²⁸

One of the unremitting problems the UGF faces is understaffing and insufficient funds. As such, in 2003 it took the laboratory an average of six months between receipt of sample material and delivery of a genetic profile report.⁴²⁹ Also, perennially tight budgets and the lag between the adoption of new technology between Costa Rica and more advanced nations, no uniform set of STRs was adopted as the basis of their DNA profiles.⁴³⁰ The result is that, at least until the later half of the present decade, it was not possible to exchange DNA profiles with other nations due to incompatibility.⁴³¹

Costa Rica has no national or regional DNA databases, and continues to use DNA profiles solely on a case-by-case basis. However, there are indications that the OIJ is looking to establish a national DNA database. During the Sixth Meeting of the Iberoamerican Academy of Criminology and Forensic Studies in 2007, Dr. UGF head Marvin Zuniga Salas reported that he met with Mr. Thomas F. Callaghan of the FBI.⁴³² During this meeting, Costa Rica's acquisition of the CODIS software was disused. Dr. Salas's report to his superiors states that he and Mr. Callaghan entered into a preliminary agreement whereby the FBI would provide the software to

⁴²⁴ See supra note 414, at 698-99.

⁴²⁵ See supra note 414, at 699.

⁴²⁶ See supra note 414, at 699.

⁴²⁷ Ana Isabe Morales et al., *Allele Frequencies of Markers LDLR, GYPA, D7S8, HBGG, GC, HLA-DQA1, and D1S8 in the general and minority populations of Costa Rica*, 124 *FORENSIC SCI. INT'L* 1 (2001)

⁴²⁸ See supra note 414, at 697-99; Bernal Morera et al., *Genotype Profiles for the Costa Rican Population at 7PCR-based Loci*, 52 *Rev. Bio. Trop.* 713, 713 (2004) (observing that the study "supported the first application of [DNA] technology into the Costa Rican courtrooms").

⁴²⁹ Supreme Council of the Judiciary, Session No. 31-03, Art. XLIV (Mar. 25, 2003).

⁴³⁰ See supra note 414, at 702.

⁴³¹ See supra note 414, at 702.

⁴³² Supreme Council of the Judiciary, Session No. 42-07, Art. L (June 7, 2007), quoting Marvin Zuniga Salas, Note No. 0218-DCF-2007 (May 25, 2005).

the Costa Rican government.⁴³³ During the OIJ's 2008 budget workshop, an oblique reference was made to an Electronic Archive of DNA Profiles for Criminal Investigations Project (Archivo Electrónico de Perfiles de AND para Identificación Criminal), however no subsequent reference to this project can be found anywhere.⁴³⁴

⁴³³ Id.

⁴³⁴ High Council, Act. No. 10, Art. IV (2008).

Cuba

According to INTERPOL, Cuba is actively working to implement a National DNA database.⁴³⁵ Nevertheless, no significant evidence of their activities has been found to date.

⁴³⁵ Personal communication with INTERPOL DNA Working Group.

CCP § 200A⁴³⁶

| Άρθρο 200Α - "Ανάλυση D.N.A. | Article 200A - Analysis D.N.A. |
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| <p>"1. «Όταν υπάρχουν σοβαρές ενδείξεις ότι ένα πρόσωπο έχει τελέσει κακούργημα ή πλημμέλημα που τιμωρείται με ποινή φυλάκισης τουλάχιστον τριών (3) μηνών, οι διωκτικές αρχές λαμβάνουν υποχρεωτικά γενετικό υλικό για ανάλυση του δεοξυριβονουκλεϊκού οξέος (Deoxyribonucleic Acid -DNA) προς το σκοπό της διαπίστωσης της ταυτότητας του δράστη του εγκλήματος αυτού.» Η ανάλυση περιορίζεται αποκλειστικά στα δεδομένα που είναι απολύτως αναγκαία για τη διαπίστωση αυτή και διεξάγεται σε κρατικό ή πανεπιστημιακό εργαστήριο. Την ανάλυση του D.N.A. του κατηγορουμένου δικαιούται να ζητήσει ο ίδιος για την υπεράσπισή του.</p> | <p>"1." When there are strong indications that a person has committed a felony or misdemeanor punishable by imprisonment of at least three (3) months, law enforcement agencies receive genetic material required for analysis of deoxyribonucleic acid (Deoxyribonucleic Acid-DNA) for the purpose of identification of the perpetrator of this crime. "The analysis is limited only to data that are absolutely necessary for finding and conducted at state or university laboratory. D.N.A. analysis of the accused may request the same for the defense.</p> |
| <p>2. Αν η κατά την προηγούμενη παράγραφο ανάλυση αποβεί θετική, το πόρισμά της κοινοποιείται στο πρόσωπο από το οποίο προέρχεται το γενετικό υλικό, που έχει δικαίωμα να ζητήσει επανάληψη της ανάλυσης. Στην περίπτωση αυτή εφαρμόζονται αναλόγως οι διατάξεις των άρθρων 204 έως 208. Το δικαίωμα επανάληψης της ανάλυσης έχει και ο ανακριτής ή ο εισαγγελέας σε κάθε περίπτωση. «Αν η ανάλυση αποβεί αρνητική, το γενετικό υλικό και τα γενετικά αποτυπώματα καταστρέφονται</p> | <p>2. If the preceding paragraph analysis proves to be positive, the result shall be notified to the person from which the genetic material, which is entitled to repeat the analysis. In this case applied mutatis mutandis in Articles 204 to 208. The right to repeat the analysis has a investigating magistrate or prosecutor in any case. "If the analysis to be negative, the genetic material and genetic fingerprints are destroyed immediately, while if the analysis proves to be positive</p> |

⁴³⁶ Κώδικας Ποινικής Δικονομίας [Kpoi.D.] [Code of Criminal Procedure] 3:200A (Greece).

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| <p>αμέσως, ενώ αν η ανάλυση αποβεί θετική το μεν γενετικό υλικό καταστρέφεται αμέσως, τα δε γενετικά αποτυπώματα του προσώπου, στο οποίο αποδίδεται η πράξη, τηρούνται σε ειδικό αρχείο που συνιστάται και λειτουργεί στη Διεύθυνση Εγκληματολογικών Ερευνών του Αρχηγείου της Ελληνικής Αστυνομίας. Τα στοιχεία αυτά τηρούνται για την αξιοποίηση στη διερεύνηση και εξιχνίαση άλλων εγκλημάτων και καταστρέφονται σε κάθε περίπτωση μετά το θάνατο του προσώπου που αφορούν. Η λειτουργία του αρχείου εποπτεύεται από αντεισαγγελέα ή εισαγγελέα εφετών, ο οποίος ορίζεται με απόφαση του Ανώτατου Δικαστικού Συμβουλίου, κατά τις κείμενες διατάξεις, με θητεία δύο (2) ετών.»</p> | <p>although the genetic material is destroyed immediately, and the genetic fingerprints of the person, which is assigned practice, kept in a special file and recommended works in the Directorate of Criminal Investigation Headquarters of the Greek Police. These figures are kept for use in investigating and solving other crimes and destroyed in each case after the death of the person concerned. The file operation is supervised by Deputy Public Prosecutor and Prosecutor of Appeal, appointed by decision of the Supreme Judicial Council, as laid down, for a term of two (2) years. "</p> |
| 3. Παραλείπεται ως μη ισχύον. | 3. Omitted as inapplicable. |
| <p>"3" 4. Η κατά την παράγραφο 2 καταστροφή του γενετικού υλικού και των γενετικών αποτυπωμάτων γίνεται παρουσία του δικαστικού λειτουργού που εποπτεύει το αρχείο. Στην καταστροφή καλείται να παραστεί με συνήγορο και τεχνικό σύμβουλο το πρόσωπο από το οποίο λήφθηκε το γενετικό υλικό.»</p> | <p>"3" 4. Under paragraph 2 of the destruction of genetic material and genetic fingerprinting done in the presence of a judicial officer who oversees the. This disaster is invited to attend with counsel and technical consultants from the person who received the genetic material. "</p> |
| «5. Παραλείπεται ως μη ισχύον» | "5. Omitted as inapplicable " |
| <p>ΣΧΟΛΙΑ ΑΡΘΡΟΥ : -Το παρόν άρθρο προστέθηκε με το άρθρο 5 του ν. 2928/2001 (Α' 141/27.6.2001).-Το εντός " " πρώτο εδάφιο της παρ. 1 του παρόντος τίθεται όπως αντικαταστάθηκε με την παρ. 3 του άρθρου 42</p> | <p>ARTICLE COMMENTS:-This article was added to Article 5 of Law 2928/2001 (A 141/27.6.2001) .- The in "the first sentence of paragraph 1 of this is as replaced by paragraph 3 of Article 42 of Law 3251/2004</p> |

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| του ν. 3251/2004 (Α΄ 127/9.7.2004).-Η παρ. 5 προστέθηκε με την παρ. 3 του άρθρου 6 του ν. 3727/2008 (Α΄ 257/18.12.2008).-Το πρώτο εδάφιο της παρ. 1, το τελευταίο εδάφιο της παρ. 2 του παρόντος τίθενται όπως αντικαταστάθηκαν και στη συνέχεια οι παρ. 3 και 5 καταργήθηκαν ενώ η παρ. 4 αναριθμήθηκε, με το άρθρο 12 του ν.3783/2009 ΦΕΚ Α 136. | (Α 127/9.7.2004) .- Paragraph 5 was inserted by paragraph 3 of article 6 of Law 3727/2008 (Α 257/18.12.2008) .- The first sentence of paragraph 1, last sentence of paragraph 2 of this enter as replaced and then the paragraph 3 and 5 were removed and paragraph 4 shall be renumbered by Article 12 of n.3783/2009 Gazette Α 136. |
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Indonesia

According to INTERPOL, Indonesia is actively working to implement a National DNA database.⁴³⁷ Nevertheless, no significant evidence of their activities has been found to date.

⁴³⁷ Personal communication with INTERPOL DNA Working Group.

I. Law on Point

Criminal Justice (Forensic Evidence and DNA Database System) Bill of 2010⁴³⁹

II. Entry Criteria

Section 56 provides that EFÉ shall establish the DNA Database System as soon as may be after commencement of this section. The System shall comprise 2 divisions: the investigation division and the identification division. The investigation division is to contain the following indexes of DNA profiles: the crime scene index, the reference index and the elimination indexes. The identification division is to contain one index of DNA profiles, the missing and unknown persons index. Each index is also to contain information that may be used to identify the sample from which each profile was generated.

Section 57 restricts the purposes for which the System may be used to the investigation of criminal offences and the finding or identification of missing persons, the identification of

⁴³⁸ This section is principally derived from the Explanatory Memorandum that accompanied the final version of the Bill.

⁴³⁹ Key definitions in subsection (1) include: “EFÉ”, “DNA profile”, “intimate sample”, “non-intimate sample”, “match”, “protected person”.

“EFÉ” refers to Eolaíocht Fhóiréinseach Éireann — the new name for the Forensic Science Laboratory of the Department of Justice, Equality and Law Reform.

“DNA profile” in relation to a person is confined to information derived from the non-coding part of DNA which refers to the chromosome regions of a person’s DNA that are not known to provide any functional properties of the person.

“intimate sample” refers to: a sample of blood, pubic hair or urine; a swab from a genital region or a body orifice (other than the mouth), or a dental impression.

“non-intimate sample” refers to: a sample of saliva, hair other than pubic hair or a nail or any material found under the nail; a swab from any part of the body including the mouth but not from any other body orifice or a genital region; or a skin impression (such as a foot print). Subsection (4) provides that references to the mouth are to be interpreted as including references to the inside of the mouth.

“match” refers to the relationship between two DNA profiles and “means that there is such a degree of correspondence between them that they are indistinguishable and it is probable that they relate to the same person, and the degree of probability can be indicated statistically.”

“protected person” refers to a person (including a child) who by reason of a mental or physical disability lacks the capacity to understand the general nature and effect of the taking of a sample from him or her, or to indicate (by speech, sign language or any other means of communication) whether he or she consents to a sample being taken from him or her. Subsection (2) excludes intoxication whether by alcohol, drugs or other substances from the meaning of “mental or physical disability”. Subsection (7) provides that the fact that a person is regarded as a protected person for the purposes of the Bill does not have any bearing on whether he or she lacks capacity for other purposes.

seriously ill, or severely injured, persons who are unable to indicate their identity or the identification of the bodies of unknown deceased persons. Subsection (2) is illustrative of these purposes.

Section 58 provides that the crime scene index shall contain DNA profiles generated from samples of biological material found at, or recovered from, crime scenes. Crime scene samples predating the commencement of the Bill are included. Crime scene is defined for the purposes of the Bill.

Section 59 provides that the reference index shall contain DNA profiles generated from samples taken from persons under sections 11, 12, and 13 (i.e. from person in Garda custody), section 27 (in accordance with 27(7) to (9) — certain volunteers who specifically consent to the entry of their profiles in the System) and 30, 31, 33, (offenders and former offenders) and 34 (deceased suspects).

Section 60 provides that the elimination (Garda Síochána) index shall contain DNA profiles generated from samples taken under sections 39 (from certain Garda personnel).

Section 61 provides that the elimination (crime scene investigators) index shall contain DNA profiles generated from samples taken under sections 40 (from certain Garda personnel), 41 (staff members of EFÉ) and 42 (certain prescribed persons).

Section 62 provides that the elimination (prescribed persons) index shall contain DNA profiles generated from samples taken under section 42 (from certain prescribed persons).

Section 63 provides that the missing and unknown persons index shall contain profiles generated from samples taken under sections 46 (missing persons), 47 (seriously ill or severely injured persons) and 48 (unknown deceased persons).

Section 64 provides that EFÉ shall establish and operate the DNA Database System in accordance with the Bill. Subsection (2) is illustrative of the functions that EFÉ will be required to perform in relation to the System. Subsection (3) provides that the Director of EFÉ may make arrangements with other laboratories to perform one of its functions in relation to the DNA Database System — the generation of DNA profiles from samples taken under the Bill. Any such arrangements must be in compliance with the requirements of the Bill.

Section 65 specifies the rules in accordance with which a DNA profile entered in an index may be compared with another profile in that index or with a DNA profile in another index. The only purpose for which a profile may be compared with another profile other than in

accordance with the specified rules is for the purpose of the administration of the System. In all cases a profile entered in an index may be compared with other profiles in the same index. As regards comparisons between profiles entered in different indexes: a profile in the crime scene index may be compared with a profile in the reference index and with profiles in the elimination indexes under certain conditions; a profile in the reference index may be compared with a profile in the crime scene index or in the missing and unknown persons index; a profile entered in the missing and unknown persons index may be compared with a profile in the reference index or the crime scene index but only for the purposes of identification. Searches of the System may only be conducted by a staff member of EFÉ. Profiles entered in the System may not be compared with profiles that are not entered in the System except in accordance with sections 96 and 97 which concern international cooperation.

III. Sample Collection

Taking of bodily samples from persons in custody of Garda Síochána

Section 9 provides that a sample or samples may be taken from a person who is detained under any of the existing Garda Síochána detention powers: section 30 of the Offences Against the State Act 1939, section 4 of the Criminal Justice Act 1984, section 2 of the Criminal Justice (Drug Trafficking) Act 1996, and section 50 of the Criminal Justice Act 2007. Samples may also be taken where a person is detained under any of these powers on the basis of a rearrest warrant issued under section 30A of the 1939 Act, section 10 of the 1984 Act, section 4 of the 1996 Act and section 51 of the 2007 Act. Linking the power to take samples with the detention powers means that in general the offence threshold for the taking of a sample is a maximum sentence of imprisonment of 5 years or more subject to limited exceptions in the case of the Offences Against the State Act 1939 and the Criminal Justice (Drug Trafficking) Act 1996 which contain a small number of offences which do not meet the 5 year threshold.

A sample or samples may be taken from a person in prison who is arrested by the Garda Síochána under section 42 of the Criminal Justice Act 1999 for the purposes of the investigation of an offence other than the offence in respect of which he or she is in prison and who is detained pursuant to section 4 of the 1984 Act.

The three categories of samples that may be taken are specified: a sample under section 11 of the Bill i.e. a sample for the purpose of the generation of a DNA profile in respect of the person for entry in the DNA Database System which is to be established under section 56 and intimate and non-intimate samples under sections 12 and 13 for the purpose of proving or disproving the involvement of the person in the offence in respect of which he or she is detained i.e. for evidential purposes.

Section 10 provides that it is the responsibility of the member in charge of the Garda station in which a person is detained under any of the Garda detention powers listed in section 9(a) through (d) to determine whether that person is a protected person. This determination is required because Part 2 of the Bill provides additional safeguards in respect of detained persons who are protected persons. “Member in charge” is defined in section 2 and refers to the member in charge appointed under the Criminal Justice Act 1984 (Treatment in Custody) Regulations 1987. In the event that the taking of an intimate sample is authorised under section 12 the opinion of the member in charge that the person is a protected person must be certified by a medical practitioner.

Section 11 permits a member of the Garda Síochána to take a sample from a detained person for the purpose of generating a DNA profile for entry in the reference index of the DNA Database System—the sample is not taken for evidential purposes. A member not below the rank of sergeant must authorise the taking of the sample. Notwithstanding that the consent of the person to the taking of the sample is not required the person is to be informed of various matters before the sample is taken, including (where applicable) that reasonable force may be used in the event that he or she fails or refuses to allow the sample to be taken. Protected persons and children under 14 years of age are excluded from the application of this section. The Minister, by order, shall exclude certain offences from the scope of this section because their nature is such that evidence relating to DNA would not assist with their investigation or prosecution. As regards the application of this section to children who are 14 years or older the Minister is required to review this within 7 years of the commencement of the section and may, having regard to the outcome of the review, vary the application of the section to such children.

Section 12 concerns the taking of an intimate sample from a detained person for the purposes of the investigation of the offence in respect of which the person is detained and for evidential purposes in any proceedings. If the sample taken is one which may be used to

generate a DNA profile in respect of the person then the sample may also be used for the purpose of the DNA Database System. A sample of this type may only be taken if a member of the Garda Síochána not below the rank of inspector has authorised it and the appropriate written consent has been given by the detained person concerned. Before giving the necessary authorisation the member must be satisfied that there are reasonable grounds for suspecting the involvement of the person in the offence in respect of which the person concerned is detained and for believing that the sample will tend to confirm or disprove the involvement of the person in the offence. Before the detained person is requested to consent he or she must be informed of various matters including the consequences of not consenting which are detailed in section 19.

Section 13 concerns the taking of a non-intimate sample from a detained person for the purposes of the investigation of the offence in respect of which the person is detained and for evidential purposes in any proceedings. If the sample taken is one which may be used to generate a DNA profile in respect of the person then the sample may also be used for the purpose of the DNA Database System. A sample of this type may only be taken if a member of the Garda Síochána not below the rank of inspector has authorised it. Unlike in the case of intimate samples under section 12 the consent of the person concerned is not required. Before giving the necessary authorisation the member must be satisfied that there are reasonable grounds for suspecting the involvement of the person in the offence in respect of which the person concerned is detained and for believing that the sample will tend to confirm or disprove the involvement of that person in the offence. Notwithstanding that the person's consent is not required he or she is to be informed of various matters before the sample is taken including that reasonable force may be used in the event that he or she fails or refuses to allow the sample to be taken. Non-intimate samples are taken or caused to be taken by a member of the Garda Síochána.

Section 15 defines the meaning of the "appropriate consent" which is required under section 12 before an intimate sample may be taken. In the case of an adult (i.e. a person aged 18 years or older other than a protected person) his or her consent is required. In the case of a protected person the consent of his or her parent or guardian or an order from a District Court judge under section 16 is required. In the case of a child aged 14 or older, the consent of the child and either a parent or guardian or an order from a District Court judge under section 17 is required. In the case of a child who is below the age of 14 the consent of his or her parent or guardian or an order from a District Court judge under section 17 is required. A parent or

guardian may be excluded from giving consent in certain circumstances; namely where he or she is the victim of the offence, has been arrested in respect of the offence or the member in charge has reasonable grounds for suspecting that the parent or guardian is complicit in the offence concerned or is likely to obstruct the course of justice. The exclusion of one parent or guardian on one of these grounds does not prevent another parent or guardian from being asked to give consent. Before consent is sought from a parent or guardian he or she must be given the information that is required to be given to the detained person under section 12.

Sections 16 and 17 concern protected persons and children respectively and provide that in certain circumstances a member of the Garda Síochána not below the rank of inspector may apply to a District Court judge for an order to take an intimate sample from a protected person or child. The circumstances in which such an application may be made are where a parent or guardian: cannot be contacted despite reasonable efforts; has been contacted but indicates that he or she cannot or will not attend at the Garda station within a reasonable period of time; is excluded from giving consent under section 15; refuses to give consent in the case of a protected person or in the case of child where the child's consent is not required (those under 14 years), or where the consent of the child is required (those aged 14 years or older) where the child has consented; or the protected person or child does not have, or it cannot be ascertained, within a reasonable period of time that he or she has a living parent or guardian from whom consent may be sought.

Section 19 concerns the consequences that may follow a refusal to consent to the taking of an intimate sample. A refusal to consent without reasonable cause may give rise to an adverse inference being drawn in subsequent criminal proceedings. Such an adverse inference may be treated as corroborating any evidence to which it is relevant — it may not be the sole or main basis of a conviction. The adverse inference may not be drawn if certain steps have not been followed. The steps are that the person was told in ordinary language that a failure to consent could give rise to such an inference being drawn, that he or he was given a reasonable opportunity to consult a solicitor before refusing consent and that the request for consent was video-recorded or the person consented in writing to it not being so recorded. This section does not apply to: a protected person, a child who is under 14 years, or a child who is 14 years or older who gave the necessary consent but whose parent or guardian refused consent unless the

child refuses to comply with a District Court order under section 17 authorising the taking of the sample.

Section 20 concerns the circumstances in which a sample taken for the purposes of the DNA Database System under section 11 may be treated as a non-intimate sample taken under section 13 for evidential purposes. This may occur where during the same period of detention a sample has been taken under section 11 and a decision is subsequently made that a non-intimate sample under section 13 is required for the purposes of the investigation at hand i.e. to prove or disprove the person's involvement in the offence in connection with which he or she is detained. Before a section 11 sample may be treated as a section 13 sample similar procedures that apply to the taking of a section 13 sample must be followed — a member not below the rank of inspector must authorise the change of use of the sample and the person must be informed of certain matters including that the result of forensic tests on the sample may be used in evidence.

Section 24 sets out the circumstances in which a section 11 or section 13 sample may be taken with the use of reasonable force. The use of force is not permitted to take section 11 samples from children or section 13 samples from children under 12 years. Force does not apply in the case of samples taken under section 12 i.e. intimate samples. Reasonable force must be authorised by a member of the Garda Síochána not below the rank of superintendent. The detained person must be informed in advance of the intention to use reasonable force and that the necessary authorisation has been given. The use of reasonable force must be observed by a member not below the rank of inspector who is to determine the number of members necessary. The taking of a sample with the use of reasonable force must be video-recorded. Special provisions apply in case of protected persons and children (where section 13 samples are required) — a person other than a member of the Garda Síochána must be present when force is being used to take a sample unless the protected person or child indicates that he or she does not wish to have the person present. The person may be the parent/guardian or adult relative or other adult reasonably named by the person who attends at the Garda or in their absence or exclusion under section 21 or 22 another adult nominated by the member in charge.

Taking of samples from volunteers to generate DNA profiles

Section 27 provides that a member of the Garda Síochána or an authorised person may request a person i.e. a volunteer to have a sample taken for the purpose of generating a DNA

profile in respect of him or her in relation to the investigation of a particular offence or an incident that may involve the commission of an offence. This section does not apply to persons in the custody of the Garda Síochána or offenders who may be sampled under section 30 or 31. An authorised person refers to a person appointed in writing under section 104 by a member not below the rank of superintendent for the purposes of sections 39 and 40 and Parts 3 and 6. In the event that the DNA profile of a victim or a person reasonably considered to be a victim is required in relation to the investigation of an offence or incident this section applies i.e. he or she is to be treated as a volunteer. Before seeking the consent of a volunteer to the taking of a sample the member or authorised person must inform the volunteer of certain matters including that he or she is not obliged to provide the sample. The volunteer's consent must be in writing.

In general profiles generated from samples taken from volunteers will not be entered in the DNA Database System — they will be retained for use in connection with the particular offence/incident only. Subsections (7) to (9) provide an exception to this general rule. A member not below the rank of sergeant may at the time that a sample is being taken under this section from a volunteer (or afterwards), inform the volunteer (other than a protected person, a child, or a victim or a person reasonably considered to be a victim) that he or she may consent to the entry of his or her profile in the reference index of the DNA Database System. This consent is a separate consent to the consent required to the taking of the sample in relation to a particular investigation or incident but must also be in writing. The person must be informed of certain matters before his or her profile may be entered in the reference index including that he or she is not obliged to consent to its entry, the effect of such entry and the rules governing the destruction of the sample and the removal of the profile from the System.

Section 28 sets out the circumstances in which a mass screening of a class of persons defined by certain characteristics may be conducted. It provides that a mass screening must be authorised by a member not below the rank of chief superintendent. In order to authorise a mass screening the member must have reasonable grounds for believing that the mass screening of the target class is likely to further the investigation of the offence and is a reasonable and proportionate measure to be taken in the investigation of that offence. A mass screening may only be conducted in respect of a relevant offence which is defined in section 2(1) as an offence in respect of which a person may be detained under any of the Garda detention powers listed in section 9(a) to (d) — generally offences which attract a maximum sentence of 5 years or more.

The target class may be determined by sex, age, kinship, geographic area, time, or any other matter which the authorising member considers appropriate. A person who comes within the target class is a volunteer and therefore is not obliged to accede to a request to provide a sample. His or her written consent is required. As is the case with all volunteers, he or she must be informed of certain matters before his or her consent is sought. A sample taken as part of a mass screening may not be used for the purposes of the DNA Database System — it is tested and retained for the purposes of the investigation of the relevant offence in respect of which it was taken.

Taking of samples from other persons or bodies for reference index of DNA Database System

Section 30 concerns adult offenders. It provides that a sample may be taken for the purpose of generating a DNA profile in respect of the person for entry in the reference index of the DNA Database System from offenders who: on commencement of the section are still subject to sentence in connection with a relevant offence, are sentenced after commencement (whether convicted before or after commencement) in respect of a relevant offence, are serving sentences of imprisonment in the State following transfer (whether before or after commencement of the section) under the Transfer of Sentenced Persons Act 1995 or the Transfer of Execution of Sentences Act 2005 in respect of an offence that corresponds to a relevant offence, and persons who (on or after commencement of the section) are subject to the notification requirements of Part 2 of the Sex Offenders Act 2001.

The sample is to be taken as soon as practicable after a person comes within one of the eligible categories and in any event before expiry of the sentence or the notification requirements. Where the offender is in prison the sample will be taken by a prison officer following authorisation by the prison governor (who may delegate his/her powers under section 107). Where the offender is not in prison the sample may be taken by a member of the Garda Síochána where an authorisation to do so has been given by a member not below the rank of sergeant and the offender attends at a station for that purpose pursuant to “a notice to attend” issued by a member not below the rank of inspector. Non-compliance with the notice to attend without reasonable cause may result in the offender being prosecuted summarily. The section specifies the information that is to be given to the offender by the prison officer or the member, as the case may be, before the sample is taken.

Section 31 concerns child offenders. For the purposes of this section “child” is not limited to persons under 18 years of age — a wider definition is required having regard to section 155(2) of the Children Act 2001 which allows certain offenders detained in children detention schools to remain for a period up to six months after attaining the age of 18 years. The section provides that a sample may be taken for the purpose of generating a DNA profile in respect of a child offender for entry in the reference index of the DNA Database System from children who: on commencement of the section are still subject to sentence in connection with a relevant offence, are sentenced to detention after commencement (whether convicted before or after commencement) in respect of a relevant offence, are serving sentences of detention in the State following transfer (whether before or after commencement of the section) under the Transfer of Sentenced Persons Act 1995 or the Transfer of Execution of Sentences Act 2005 in respect of an offence that corresponds to a relevant offence, and child offenders who (on or after commencement of the section) are subject to the notification requirements of Part 2 of the Sex Offenders Act 2001.

Section 32 contains the criteria that must be met before a person comes within the term “former offender”. A former offender is a person who is no longer subject to a sentence for a relevant offence (or a corresponding offence in the case of convictions in other jurisdictions) or in the case of a sex offender, is no longer subject to notification requirements under the Sex Offenders Act 2001 (or corresponding requirements in the case of convictions in other jurisdictions). A person is not a former offender for the purpose of this section: if his /her DNA profile is already entered in the reference index of the DNA Database (in so far as that can be ascertained) and a member of the Garda Síochána or a judge of the District Court is not satisfied having regard to a range of specified factors that it is appropriate that a sample be taken under section 33; the person concerned is not ordinarily resident in the State or does not have his or her principal residence in the State; and a period of 10 years has elapsed since the expiry of the last sentence for a relevant offence of which the person was convicted or, in the case of a sex offender, since the end of the last notification period to which he or she was subject. Only certain convictions handed down when the person was a child are eligible for consideration — those triable by the Central Criminal Court and any other offences prescribed having regard to their nature and seriousness.

Section 33 sets out the procedures to apply in the case of former offenders. Where a member not below the rank of superintendent is satisfied that a person is a former offender and that it is in the interests of the protection of society and desirable for the purpose of assisting in the investigation of offences to have a sample taken from the person under this section the member may authorise the taking of the sample. Where such an authorisation has been given a member may request the former offender concerned to attend at the station for the purpose of having the sample taken. The person shall be put on notice that if he or she does not attend an *ex parte* application may be made to a District Court judge for an order authorising the sending of a notice to attend — failure to comply with which without reasonable cause is a summary offence. Should an application to a District Court judge be necessary it must be made by a member not below the rank of superintendent. In the event that the person is prosecuted for not complying with the court order it shall be a defence for him or her to show that he or she is not a former offender. Before a sample is taken under this section the former offender must be given certain information.

Section 34 allows a sample to be taken from the body of a deceased person for the purpose of generating a DNA profile in respect of the person to be entered in the reference index of the DNA Database System. The taking of such a sample must be authorised by a District Court judge on the application of a member not below the rank of superintendent. An application may be made where the member has reasonable grounds for suspecting that the person, prior to his or her death, has committed a relevant offence and that the taking of a sample will further the investigation of the offence concerned. The judge may make further orders in relation to entry, search and seizure on the application of the member in order to allow the order to take the sample to be executed. Samples under this section are to be taken by registered medical practitioners or any other prescribed persons. A profile entered in the reference index of the System in accordance with this section may be compared with the other profiles in that index and with the profiles contained in the crime scene index of the System in accordance with section 65(3). Once this exercise has been completed the profile is to be removed from the System and the sample destroyed unless the member in charge of the investigation of the offence concerned is satisfied that the sample and profile should be retained for the purposes of that investigation. This section does not authorise the exhumation of a body.

Section 35 sets out the circumstances in which reasonable force may be used to take samples under Part 4. Reasonable force may only be used to take samples under this Part where the person concerned is in prison, a children detention school or other place of detention. Reasonable force must be authorised by the governor of the prison/place of detention or the director of the children detention school. The person must be informed in advance of the intention to use reasonable force and that the necessary authorisation has been given. The use of reasonable force must be observed by the governor/director of the children detention school who is to determine the number of prison officers/staff of the children detention school that is reasonably necessary for the purposes of the section. The taking of a sample with the use of reasonable force must be video-recorded.

Taking of samples from persons or bodies for purposes of identification division of DNA Database System

Section 46 concerns missing persons, whether they went missing before or after commencement. It provides that a sample may be taken in relation to such a person from his or her clothing or other belongings or from his or her blood relatives for the purposes of the missing and unknown persons index of the DNA Database System. A sample may only be taken for the purposes of the Garda investigation of the disappearance of the person if the circumstances of the disappearance so require or following a natural or other disaster, one or more persons are missing. Authorisation is required at inspector level or above for the taking of the sample. The authorisation may only be given if the member giving it believes that the taking of the sample and the entry of the related DNA profile in the missing and unknown persons index of the DNA Database System may assist with finding or identifying the missing person. Before a sample may be taken from a blood relative his or her consent must be obtained in writing. Such a person is to be given certain information before the sample is taken. A sample, in the case of a blood relative, is restricted to a mouth swab or plucked head hairs (as set out in section 2(3)). A sample relating to a missing person that is in the possession of the Garda Síochána or EFÉ arising from the investigation into the disappearance of the person may be used for the purposes of this section.

Section 47 concerns persons who are seriously ill or severely injured and who, by reason of that illness or injury, cannot identify themselves. It provides that a sample (restricted to a

mouth swab or plucked head hair) may be taken from such a person for the purposes of the missing and unknown persons index of the DNA Database System on the authorisation of the High Court. A court application may only be made where: a medical practitioner certifies that the person concerned is suffering from a serious illness or has sustained a severe injury by reason of which he or she is unable to identify him or herself and that inability is likely to endure for a prolonged period; and the person concerned (other than a child or a protected person) has been consulted with regard to the making of the application in so far as that is possible. A court application may be made by the Health Services Executive, the owner or manager of a hospital or nursing home or the Garda Commissioner. The matters of which the High Court has to be satisfied before making an order are specified. A sample taken under this section must be taken by a medical practitioner/nurse or any other prescribed person.

Section 48 concerns unknown deceased persons. It provides that a coroner to whom the death of the unknown deceased person is reportable may authorise the taking of a sample from the body of the person for the purposes of the missing and unknown persons index of the DNA Database System where he or she has reason to believe that such a course of action may assist with identifying the person. The coroner is to inform the superintendent of the Garda district in which the unknown deceased person was located of the giving of the authorisation. A sample taken under this section must be taken by a medical practitioner or any other prescribed person. A sample taken from the body of the unknown deceased person already in the possession of the coroner may be used for the purposes of this section.

Removal Criteria and Sample Retention

Section 72 defines who constitutes an applicant for the purposes of section 74 (i.e. who may apply to the Commissioner for the destruction of his or her sample and removal of a profile (if any) from the System. Subject to certain qualifications an applicant is a person who: was not proceeded against, or if proceeded against was acquitted or the proceedings were dismissed or discontinued; who is subject to an order under section 1 of the Probation of Offenders Act 1907; or whose conviction was quashed or declared to be a miscarriage of justice. In the case of a person who was not proceeded against a period of 12 months must elapse between the taking of the sample concerned and the application. Furthermore the failure to institute proceedings must not be due to the fact that the person absconded or could not be located.

Section 73 provides that in exceptional circumstances a person against whom proceedings have not been brought does not have to wait for the usual period of 12 months to elapse before making an application under section 74 to the Commissioner. Subsection (2) is illustrative of what constitutes exceptional circumstances.

Section 74 provides that an applicant (within the meaning of section 72) may apply in writing to the Commissioner to have his or her sample destroyed and any profile removed from the System. The Commissioner must determine the application within 12 weeks and provide written reasons. In determining the application the Commissioner must be satisfied that the person is “an applicant” and have regard, in particular to a range of specified matters. The Commissioner may grant the application in full or in part. Where the Commissioner does not grant the application in full or does not make a determination within the 12 weeks the applicant may appeal to the District Court. The appeal is to be on notice and shall be heard in private.

Section 75 concerns former offenders. It provides that a person from whom a sample was taken under section 33 may apply to the Commissioner for the destruction of that sample/removal of that profile in the event that any conviction to which regard was had when making a determination as to whether he or she was a former offender under section 32 has been quashed or declared to be a miscarriage of justice.

Section 76, subject to certain qualifications, applies a default destruction period of 3 years to samples taken under section 11, 30, 31, or 33 i.e. samples taken under Parts 2 and 4 for the purposes of the DNA Database System.

Section 77 subject to certain qualifications, applies a default destruction period of 3 years to samples taken under sections 12 and 13 (intimate and non-intimate samples for evidential purposes). The circumstances in which this section applies include where the person was not proceeded against within the default destruction period, or if proceeded against was acquitted or the proceedings were dismissed or discontinued or who is subject to an order under section 1 of the Probation of Offenders Act 1907.

Section 78 subject to certain qualifications, applies default removal periods of 10 years for adults and 5 years for children and protected persons in the case of DNA profiles entered in the System. The circumstances in which this section applies include where the person was not proceeded against within the relevant default removal period, or if proceeded against was

acquitted or the proceedings were dismissed or discontinued or who is subject to an order under section 1 of the Probation of Offenders Act 1907.

Section 79 makes an exception to the indefinite retention arrangements applicable to the DNA profiles of convicted persons entered in the System. The exception applies in the case of child offenders (other than those convicted of offences triable by the Central Criminal Court or prescribed by the Minister having regard to their nature and seriousness). A default removal period of 10 years applies subject to certain qualifications such as the child offender not being convicted of an offence within the default period.

Section 80 specifies the circumstances in which a person who would otherwise come within the meaning of “applicant” in section 72 is excluded and in which the default removal periods in sections 78 and 79 do not apply. The circumstances are: the fact that the person was not proceeded against for an offence other than the offence in connection with which the sample was taken was due to the fact that he or she absconded or could not be located; proceedings for another offence have been instituted against the person and he or she has not been acquitted or the proceedings have not been dismissed or discontinued; the person has been convicted of another offence and that conviction has not been quashed or declared to be a miscarriage of justice.

Section 81 deals with the application of the time periods under section 72 and 78 where an opportunity to take a sample from a person arose during the relevant period but was not taken (e.g. where the person was arrested and detained but a sample was not taken because his or her profile was already on the System). Where this is the case the date on which the subsequent sample could have been taken is deemed to be the date on which the first sample was taken i.e. the clock is re-started.

Section 82 concerns the destruction/removal arrangements for Part 3 (volunteers). A volunteer (or in the case of a child or protected person the person who gave consent) may request the destruction of his or her sample and any profile by notice in writing to the Commissioner. Pursuant to the request the sample/profile is to be destroyed within 2 months subject to section 88. If a sample/profile has not been destroyed previously it is to be destroyed within 2 months of the completion of the investigation or any proceedings in connection with the offence in respect of which it was taken. Where a volunteer consented to the entry of his or her profile in the DNA Database System a request for destruction is to be construed as including a request for removal.

In such a case the Commissioner may request the volunteer to agree to his or her profile being removed from the System but retained in connection with the particular investigation in respect of which it was taken. The written consent of the volunteer is required to such a request.

Section 86 sets out the destruction arrangements to apply to a sample taken under section 43 or 44. In general once the necessary comparison between the profile generated from the sample taken under either of those sections with the crime scene sample concerned has been completed the sample and profile are to be destroyed as soon as practicable. An exception may be made where the Commissioner, or the Director, as the case may be, is satisfied that there is good reason relating to the investigation of a particular offence why the sample/profile should be retained. If such is the case the sample/profile is to be destroyed not more than 2 months after the completion of the investigation or any proceedings, whichever is the later.

Section 87 concerns the destruction of samples/profiles relating to Part 6 (identification). A blood relative of a missing person (or in the case of a child or protected person the person who gave consent) may request the destruction of his or her sample and the removal of the profile by notice in writing to the Commissioner. Pursuant to the request the sample/profile is to be destroyed within 2 months. A sample/profile taken from a blood relative (if not previously destroyed) or relating to the missing person is to be destroyed and the profile removed within 2 months of the missing person having been located or identified. Similar arrangements apply in the case of samples taken from unknown persons (living or deceased). Certain qualifications apply in all cases. The section does not authorise the destruction of a sample or the removal of a profile where it is required for the purposes of: an investigation into the disappearance of a missing person or into how the unknown living person became ill or was injured or the unknown deceased person died; or an inquest.

Section 88 provides that the Commissioner may apply to a District Court judge to retain a sample beyond the default destruction periods or a profile beyond the default removal periods (in sections 76, 77, 78 or 79) where there is good reason to do so. A member not below the rank of superintendent may make an application to a District Court judge to retain a sample/profile taken from a volunteer under section 27 or 28 where there is good reason relating to the investigation of the particular offence in respect of which it was taken.

An application is to be on notice. The hearing is to be in private. An order may not be made unless the person concerned, where he or she applies to be heard, has been given a reasonable opportunity to be heard.

Section 91 provides that the Minister may by order alter (in the main by decreasing) the default destruction periods and default removal periods specified in this Part having regard to a review conducted under section 90. *Section 92* provides that where a sample is to be destroyed or a profile is to be removed the Commissioner shall request or cause to be requested EFÉ to carry out the necessary actions. *Section 93* specifies the circumstances in which a person is to be notified of the destruction of a sample or the removal of a profile from the System. *Section 94* provides that the references in this Part to the Commissioner, for the purposes of the application of this Part, shall be construed as references to the Ombudsman Commission.

Law No. 89 of June 30, 2009⁴⁴⁰

⁴⁴⁰ 160 [Gazz. Uff.] July 13, 2009, Supp. No. 180.

Lebanon

According to INTERPOL, Lebanon is actively working to implement a National DNA database.⁴⁴¹ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁴¹ Personal communication with INTERPOL DNA Working Group.

Lesotho

According to INTERPOL, Lesotho is actively working to implement a National DNA database.⁴⁴² Nevertheless, no significant evidence of their activities has been found to date.

⁴⁴² Personal communication with INTERPOL DNA Working Group.

Libya

According to INTERPOL, Lybia is actively working to implement a National DNA database.⁴⁴³ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁴³ Personal communication with INTERPOL DNA Working Group.

DNA Identification Act of 2009⁴⁴⁴

⁴⁴⁴ Act No. 15 of 2009, Gov. Gzt. No. 76 of 22 August 2009.

CPP §§ 147, 154, 226, 257, 277

Predlog Zakona o nacionalnom DNK registru [Draft law on the National DNA Registry]⁴⁴⁵

A physical examination of a suspect or accused can be conducted at any time without their consent if a magistrate deems it is “necessary to establish facts relevant to criminal proceedings.”⁴⁴⁶ What’s more, any person may be subject to a full physical examination upon the mere suspicion that their body harbors trace evidence of a crime.⁴⁴⁷ In addition to coerced bodily exams, blood and other biological samples can be collected from anyone if the court deems them “necessary . . . to determine other facts relevant to the criminal proceedings.” The only exception to this rule is if the act of taking the sample itself would pose a serious health hazard.⁴⁴⁸ Without the need for court approval, DNA can be collected from any person at any time via buccal swab.⁴⁴⁹

⁴⁴⁵ This document appears to be presently classified.

⁴⁴⁶ Zakonik o Krivičnom Postupku [Code of Criminal Procedure], Sl. list Crne Gore od 1. januara 2009 [CCP] Art. 154(1), (3) (“potrebno da se utvrde činjenice važne za krivični postupak”).

⁴⁴⁷ CCP Art. 154(1).

⁴⁴⁸ CCP Art. 154(2).

⁴⁴⁹ CCP Art. 154(3).

Namibia

According to INTERPOL, Nabimia is actively working to implement a National DNA database.⁴⁵⁰ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵⁰ Personal communication with INTERPOL DNA Working Group.

Oman

According to INTERPOL, Oman is actively working to implement a National DNA database.⁴⁵¹ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵¹ Personal communication with INTERPOL DNA Working Group.

Qatar

According to INTERPOL, Qatar is actively working to implement a National DNA database.⁴⁵² Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵² Personal communication with INTERPOL DNA Working Group.

Syria

According to INTERPOL, Synria is actively working to implement a National DNA database.⁴⁵³ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵³ Personal communication with INTERPOL DNA Working Group.

Tanzania

According to INTERPOL, Tanzania is actively working to implement a National DNA database.⁴⁵⁴ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵⁴ Personal communication with INTERPOL DNA Working Group.

Thailand

According to INTERPOL, Thailand is actively working to implement a National DNA database.⁴⁵⁵ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵⁵ Personal communication with INTERPOL DNA Working Group.

Uruguay

Draft Bill Creating a National Register of DNA Fingerprints

In October 2001, pursuant to Carpeta No. 1671 of 2001, the Uruguayan legislature created a national DNA profile archive (“Archivo de Identificación Genética Criminal”). Administered by the Ministry of Interior through the National Technical Police, the archive was created to contain genetic profiles derived from three sources (1) unidentified DNA collected at crime scenes, (2) DNA collected from individuals charged as perpetrators, accomplices or accessories with rape, murder, looting, mayhem, and (3) DNA collected from any individually twice convicted for any crime. Use of the contents of the archive was restricted to specific criminal investigations, even in which cases prior judicial authorization was required before the archive could be accessed. In addition to maintaining the database, the National Technical Police are also responsible for the care and preservation of genetic samples for further study and, if applicable, archiving.

In 2006, the government of Uruguay renewed the DNA archive legislation and later in 2007 partnered with the U.S. to deploy a version of the FBI-developed CODIS DNA database software. In September of 2009, Uruguay enacted legislation creating an additional national DNA repository, the National Register of Genetic Profiles (“Registro Nacional de Huellas Genéticas”). The purpose of this new Register was to expand the range of potential applications of DNA profiles presently residing in the National Archive. Also the responsibility of the Ministry of Interior and the National Directorate of Technical Police, this new database employs the CODIS software to actively attempt to match unidentified genetic samples collected at crime scenes with unrelated individuals whose profile is stored in the archive.

CCP §§ 202B, 208, as amended

Zimbabwe

According to INTERPOL, Zimbabwe is actively working to implement a National DNA database.⁴⁵⁶ Nevertheless, no significant evidence of their activities has been found to date.

⁴⁵⁶ Personal communication with INTERPOL DNA Working Group.

Conclusion & Recommendations/Best Practices

As it is often said, all good writing is rewriting. To that it might be added that all good research is the product of perspective. Having spent the manyA several months imbricated in the minutiae of Forensic DNA Databases, it is difficult to draw back and view this very rough draft as anything but a well-formatted pastiche—a hodgepodge of different methodologies, shifting stylistic choices and, above all, drastically variant source material. Nevertheless, I can confidently point one aspect of the work of which I am confident: it aspires to comprehensiveness—however closely bounded a comprehensiveness my resources have permitted.

This is very much a rough draft. The single largest hurdle to this work has been the language barriers. Where I have been in doubt, I have included both an English text along with (sometimes alongside) an original one. For many countries, there is nothing at all. There is much work to be done. Still, I believe that the outline of the final work can be perceived in its current form.