

**THE DNA IDENTIFICATION BILL**  
**(No. XII of 2009)**

**Explanatory Memorandum**

1. The main object of this Bill is to empower the police, in certain specific circumstances in connection with serious offences, to take and make use of DNA (deoxyribonucleic acid) samples for the purpose of determining the connection with or involvement of a person in an offence.

2. The Bill provides that, unless a person, who may be connected or associated with an offence consents, a DNA sample can only be taken from him by the order of a Judge in Chambers. However, where a person, who has already been convicted of a serious offence, fails to provide a sample when so requested by the Commissioner of Police, that person can be prosecuted for failing to provide a sample.

3. The Bill further provides for the establishment of –

- (a) DNA Data Records which shall contain data profiles, which will assist in the investigation of criminal offences where DNA samples have been secured from the scene of crime;
- (b) a DNA Population Statistical Database for the purposes of statistical interpretation of the results of forensic analysis; and
- (c) a database for unidentified and missing persons.

4. Provision is also made for the taking, storage, preservation and destruction of DNA samples.

5. The Bill further provides that any information gathered as a result of the taking of a DNA sample is to be treated as strictly confidential.

6. Provision is also made for cooperation with foreign law enforcement agencies on matters relating to information in the DNA Data Records.

7. In addition provisions have been made for the establishment of filiation using DNA, pursuant to a Judge's order.

**DR N. RAMGOOLAM**

*Prime Minister*

*Minister of Defence and Home Affairs*

12 June 2009

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## **A BILL**

### **To make provision for the taking of DNA samples and their use, protection, storage and destruction**

ENACTED by the Parliament of Mauritius, as follows –

#### **1. Short title**

This Act may be cited as the DNA Identification Act 2009.

## 2. Interpretation

In this Act –

“Director” means the Director of the Forensic Science Laboratory;

“DNA” means deoxyribonucleic acid;

“DNA sample” means an extract from a biological sample, including a reference sample, such as blood, saliva, hair, bone, tissue or seminal fluids;

“forensic analysis” means an analysis carried out by an FSL officer on a DNA sample to determine the inheritance characteristics of a person and any incidental test associated with the analysis;

“FSL” means the Forensic Science Laboratory;

“FSL officer” means any FSL officer authorised by the Director to carry out a forensic analysis;

“incapable person” –

- (a) means a person with a condition of arrested or incomplete development of mind or body arising from inherent causes or induced by disease or injury, who requires care or treatment for his protection or welfare or that of others; and
- (b) includes a person referred to in “Titre Onzième”, “Chapitre Deuxième”, “Chapitre Troisième” and “Chapitre Quatrième” of “Livre Premier” of the Code Civil Mauricien;

“Minister” means the Minister to whom the responsibility of home affairs is assigned;

“parent”, in relation to a child or incapable person –

- (a) means his father, mother or legal guardian;
- (b) includes any other person in charge of the child or incapable person;

“qualified person” means –

- (a) where the extract of a biological sample is taken other than by means of a buccal swab or other non-invasive procedure –

- (i) a registered medical practitioner or a registered nurse;
  - (ii) a person having followed appropriate medical training, who is employed in a clinic, hospital or surgery and is acting under the supervision of a registered medical practitioner;
- (b) where a buccal swab or other non invasive procedure is used, a police officer duly authorised by the Commissioner of Police;

“serious offence” means –

- (a) an offence punishable by a term of imprisonment or penal servitude but does not include a contravention or an offence which is punishable by a fine only; or
- (b) such offence, punishable as specified in paragraph (a), as may be prescribed.

### **3. Request for DNA sample**

(1) A police officer not below the rank of Superintendent of Police may, where he has reasonable ground to believe that a person is or may be connected to or associated with a serious offence, request a DNA sample from that person for the purpose of forensic analysis.

(2) Where the person referred to in subsection (1) is a child or an incapable person, the police officer shall obtain the written authorisation of his parent.

(3) Before determining whether to make a request under subsection (1), the police officer shall have regard to –

- (a) the nature of the offence;
- (b) the degree of the person’s alleged involvement or participation in the offence; and
- (c) the existence of a less intrusive but reasonably practical way of obtaining evidence to confirm or disprove the person’s alleged involvement or participation in the commission of the offence.

### **4. Request for DNA samples from convicted persons**

(1) The Commissioner of Police may require a convicted person to submit DNA samples for the purposes of Forensic Analysis.

(2) Any person who fails to submit a DNA sample, when so required under subsection (1), shall commit an offence.

(3) For the purposes of this section, a “convicted person” means a person who is convicted of a serious offence or has been at any time before the coming into force of this Act convicted of such an offence.

## **5. Interference with sample**

(1) Any person who, without lawful authority, interferes with, contaminates or destroys a DNA sample, including a biological sample or a reference sample, shall commit an offence.

(2) A police officer may use reasonable force to prevent a person from interfering, contaminating or destroying any sample referred to in subsection (1).

## **6. Application to Judge in Chambers**

(1) Where a person refuses to comply with a request under section 3, the Commissioner of Police, or such other officer as may be authorised by him, may apply to a Judge in Chambers for an order authorising the taking of a DNA sample from that person.

(2) An application under subsection (1) may be made where the Commissioner of Police or the authorised officer is satisfied that –

- (a) the person from whom the DNA sample was requested is or may be connected to or associated with a serious offence; and
- (b) the DNA sample will tend to confirm or disprove that person’s involvement or participation in that offence.

(3) An application under subsection (1) shall be supported by an affidavit, stating –

- (a) the name, date of birth, and, where appropriate, the national identity card number or passport number of the person from whom the sample was requested;
- (b) the nature of the offence to which the person is believed to be connected or associated; and
- (c) the circumstances surrounding the commission of the offence, including the degree of the alleged potential involvement or participation of that person in the commission

of the offence and any other matter which the police believes may be relevant.

## **7. Grant of application**

(1) A Judge may grant an application made under section 6 and make an order authorising the taking of a DNA sample from a specified person where –

- (a) the taking of the DNA sample is justified in all the circumstances of the case; and
- (b) it appears that the person against whom the application is made may be connected to or associated with the offence; and
- (c) it is in the interest of justice to do so.

(2) An order made under subsection (1) shall be valid for a period of 14 days, and the Judge may extend the period of validity of the order, for such period not exceeding 28 days as he thinks fit.

## **8. DNA sample to establish filiation**

Notwithstanding any of the provisions of this Act, a forensic analysis for the purpose of ascertaining filiation under article 340 or 341 of the Code Civil Mauricien may be carried out by the FSL –

- (a) where there is an order from a Judge to that effect or the relevant parties consent to provide the DNA sample; and
- (b) on payment of such fees as may be prescribed.

## **9. Taking, storage, preservation and destruction of DNA sample**

(1) Every DNA sample shall be taken by a qualified person and stored and preserved in accordance with such procedure and guidelines as may be laid down by the FSL.

(2) Subject to subsections (3) and (4) and section 10(5), a DNA sample shall be destroyed by the FSL as soon as it has fulfilled the purpose for which it was taken or after the final disposal of any proceedings in relation to which the sample was taken, whichever occurs later.

(3) (a) Subject to paragraph (b), a DNA sample may be kept for such reasonable time as may be appropriate for the purpose of research or the constitution of its DNA Data Records or DNA Population Statistical Database.

(b) No research shall be undertaken pursuant to paragraph (a) without the approval of the Minister.

(4) A Court may, where it is satisfied that a DNA sample may reasonably be required in an investigation or a prosecution of a person for an offence, order that the DNA sample shall not be destroyed during such period as the Court considers appropriate.

(5) Notwithstanding the preceding subsections, a DNA sample collected at a scene of crime may be kept for as long as the Commissioner of Police or the FSL deems it desirable to do so unless the destruction of the sample is ordered by the Court.

## **10. DNA Data Records**

(1) The Director shall keep DNA Data Records consisting of an index of DNA Profiles derived from DNA samples submitted to the FSL for forensic analysis and ensure that those data are securely stored and remain confidential.

(2) Where a person –

- (a) is convicted of an offence following proceedings in which his DNA sample has been adduced in evidence; or
- (b) is not convicted of an offence but gives his written consent to,

the DNA data derived from the forensic analysis of his DNA sample may be kept as part of the DNA Data Records.

(3) Where a person who is not convicted for an offence does not give his written consent pursuant to subsection (2), the DNA data derived from the forensic analysis of his DNA sample may be kept as part of the DNA Data Records where-

- (a) he has previously been convicted of an offence; or
- (b) he has since been charged with having committed another offence.

(4) Subject to subsection (3), where a person who is not convicted for an offence does not give his consent pursuant to subsection (2), the DNA data

derived from forensic analysis of his DNA sample may be kept as part of the DNA Data Records for a period not exceeding 10 years as from the date of the acquittal, stay of proceedings or decision not to prosecute, as appropriate, unless that person requests the Director in writing, after his acquittal, the stay of proceedings or decision not to prosecute him, as appropriate, to erase his data from the DNA data records, and the Director shall cause the data to be erased within a period of 2 years from the receipt of the request.

(5) Where a person has consented to give his DNA sample under this Act, that consent may be revoked by giving written notice to the Director and the Director shall cause the DNA sample to be destroyed and the resulting profile to be erased from the DNA Data Records within a period of 2 years from the date of receipt of the revocation.

### **11. Destruction of DNA sample and erasure of DNA profile**

Notwithstanding any provision of this Act, the Supreme Court may order the destruction of a DNA sample or erasure of a DNA profile from the DNA Data Records where it has been established, by the person from whom the DNA sample has been taken, that the sample or profile is being used illegally or for purposes not authorised under this Act.

### **12. DNA Population Statistical Database**

(1) There shall be set up by the Director a DNA Population Statistical Database for the purposes of statistical interpretation of results of forensic analysis, in accordance with such procedures or guidelines as may be laid down by the FSL.

(2) DNA samples may, for the purposes of the database referred to in subsection (1), be obtained from volunteers with a view to ensuring that they represent a cross-section of the Mauritian population.

(3) The Director shall ensure that the donors of DNA samples for the purposes of this section remain anonymous.

(4) For the purposes of this section, “cross section of the Mauritian population” means persons living in Mauritius and classified according to their origin from –

- (a) Africa;
- (b) China and South East Asia;
- (c) Europe and North America;
- (d) India and Pakistan; and
- (e) a mix of any of the regions specified at paragraphs (a),(b), (c) and (d).

### **13. Protection of information**

(1) Subject to section 12(3), the Director shall not disclose any information or data obtained from a DNA sample, except –

- (a) to the police or to a Court in the course of a criminal investigation or criminal proceedings;
- (b) to the person from whom the DNA sample was taken; or
- (c) to the Judge where a Judge's order has been issued under section 8.

(2) Any person who has access to –

- (a) any information stored in the DNA Data Records; or
- (b) any other information revealed by a forensic analysis,

shall not disclose that information except as provided for in this Act.

(3) Any person who, without lawful authority, contravenes subsection (2) shall commit an offence.

### **14. Unidentified and Missing Persons Database**

(1) There shall be established by the Director an Unidentified and Missing Persons Database, the sole purpose of which shall be to assist the relevant authorities in identifying missing persons and which database shall be kept separate from the other databases established under this Act.

(2) The Missing Persons Database shall comprise of DNA profiles and information relating thereto derived from the intimate or non-intimate samples obtained from -

- (a) the body or part of the body of an unidentified deceased person;
- (b) anything worn or carried by, or personal belongings of, the missing person;
- (c) the parents or appropriate relatives of the missing person, where their consent has been obtained.

- (3) The Director shall develop standards and establish guidelines for the preservation and storage of DNA samples obtained under this section.
- (4) In this section, “missing person” means a person missing –
- (a) as a result of an abduction;
  - (b) in suspicious circumstances;
  - (c) in unknown circumstances or, where there is reason to believe that the person is in danger or dead and that the person has been missing for a period of more than 30 days or, at the discretion of the Commissioner of Police, for a period of less than 30 days.

#### **15. Cooperation with foreign law enforcement agencies**

(1) Notwithstanding section 13, the Director, subject to the approval of the Attorney-General, may, pursuant to a request, whether made under the Mutual Assistance in Criminal and Related Matters Act or otherwise, compare the DNA profile received from a foreign law enforcement agency with the DNA profile in the DNA Data Records kept by the Director, or where appropriate, with the DNA profile of an unidentified deceased person, and communicate the relevant information to that law enforcement agency.

(2) For the purposes of this section, “foreign law enforcement agency” includes a law agency of a foreign State, an international organisation established by Governments of States or any other international organisation.

#### **16. Immunity**

No civil or criminal liability shall be incurred by any person who exercises in good faith any powers or functions conferred on him by this Act.

#### **17. Offences**

Any person who commits an offence under this Act shall, on conviction, be liable to-

- (a) a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years; or
- (b) in the case of an offence under section 5, a fine of 300,000 rupees and to imprisonment for a term not exceeding 5 years.

#### **18. Regulations, protocols and guidelines**

(1) The Minister may, after consultation with the FSL, make such regulations as he thinks fit for the purposes of this Act.

(2) The Commissioner of Police, in consultation with the FSL shall, within 12 weeks of the coming into force of this Act, issue protocols and guidelines for scene of crime management, including the taking, storage and preservation of DNA samples collected on a scene of crime.

(3) The Director shall develop such protocols and guidelines as may be appropriate to ensure the effective forensic procedures as may be required under this Act.

## **19. Exemptions**

Notwithstanding any other provision of this Act, the Data Protection Act shall not apply to any DNA data matching carried out under this Act.

## **20. Saving**

Any existing DNA profile and any information in relation thereto kept and maintained by the FSL 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 Data Records established under this Act.

## **21. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of the Act.