

THE DNA EVIDENCE ACT, 2015

(Act of 2015)

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A BILL

ENTITLED

AN ACT to Provide for the keeping, maintenance and operation a consolidated forensic DNA databank, to be known as the National DNA Register, for the purposes of forensic investigation and human identification *inter alia*; to provide for the regulation of the taking of bodily samples (other than finger prints taken for purposes of the *Finger Prints Act*) from persons and crime scenes; the retention or destruction of samples and DNA profiles; and for related matters.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

- 1.—(1) This Act may be cited as the DNA Evidence Act, 2015. Short title and
commence-
ment.
- (2) This Act shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“adult” means a person who has attained the age of eighteen years;

“adult correctional centre” has the meaning assigned to it by section 2 of the *Corrections Act*;

“analysis” in relation to a sample or a DNA profile, includes sampling, extraction, quantification, amplification, electrophoresis, comparison and matching, identification, evaluation and the keeping of statistics, as is appropriate;

“authorizing officer” means any of the following persons who authorizes the taking of a sample—

- (a) in the case of the Force, the Jamaica Defence Force or the Rural Police, an officer of the rank of Sergeant or above;
- (b) in the case of a forensic analyst, the Custodian;
- (c) in the case of the Independent Commission of Investigations, the person appointed as the Commissioner under section 3(2) of the *Independent Commission of Investigations Act*;
- (d) in the case of the Correctional Services, a person of the rank of Assistant Superintendent or above;
- (e) in any other case, the most senior officer in the place of detention;

“body” in relation to a deceased person (including a foetus or stillborn child) means the body or a part of the body of the person and the decomposed or burnt remains of the person;

“bodily sample” means saliva, blood, mucus, urine, semen, synovial fluid, spinal fluid, fecal matter, digestive fluids, vaginal secretions, pleural fluid, cerebrospinal fluid,

peritoneal fluid, amniotic fluid, hair, nails and any other biological material or naturally occurring bodily fluid or secretion;

“child” means a person under the age of eighteen years;

“Children’s Advocate” means the Office of the Children’s Advocate established by section 4 of the *Child Care and Protection Act*;

“code of practice” means a code of practice that is approved by the Minister under section 68(7);

“commencement date” means the date of commencement of this Act;

“Commissioner of Corrections” means the public officer referred to in section 3 of the *Corrections Act*;

“Commissioner of Police” means the public officer referred to in section 3 of the *Constabulary Force Act*;

“contamination”—

- (a) in relation to a sample other than a crime scene sample, means the intentional or unintentional introduction of exogenous DNA into a sample or a polymerase chain reaction; or
- (b) in relation to a crime scene sample, means the incorporation in the crime scene sample of the DNA of a person during—
 - (i) his attendance at the crime scene concerned;
 - (ii) the conduct of the investigation of an offence or incident that may have involved the commission of an offence; or
 - (iii) the examination or analysis of that sample;

“convicted person” means a person who is convicted of a relevant offence or has been at any time before the commencement date convicted of a relevant offence;

“correctional institution” has the meaning assigned to it in section 2 of the *Corrections Act*;

“correctional officer” has the meaning assigned to it in section 2 of the *Corrections Act*;

“crime scene” includes—

- (a) any place where an offence was committed or where evidence may be derived in relation to an offence;
- (b) anything found at any place associated with the commission of an offence;
- (c) anything found on or any foreign object found within the body or any part of the body, of the victim;
- (d) anything worn or carried by the victim at the time when an offence was committed;
- (e) anything found on, or any foreign object found within, the body or any part of the body, of a person in custody or a suspected person;

“crime scene index”, in relation to the investigation division of the National DNA Register, shall be construed in accordance with section 8(2);

“crime scene sample” means any bodily sample or sample of biological material found at, or recovered from, a crime scene from which a DNA profile may be generated;

“Custodian” means the person designated as the Custodian under section 10 or any person authorized in that behalf by the Custodian;

“detention officer” means any of the persons below, namely—

- (a) any member of the Force;
- (b) any member (of whatever rank) of the Jamaica Defence Force when acting in support of the Force;
- (c) any member of the Rural Police who is authorized by an officer of the Force;
- (d) a forensic analyst;
- (e) a correctional officer;
- (f) a person appointed as an investigator under the *Independent Commission of Investigations Act*; or
- (g) any other person with responsibility for the operation of a place of detention;

“DNA” means deoxyribonucleic acid;

“DNA analysis” means the analysis of DNA material;

“DNA evidence” means evidence obtained by DNA analysis;

“DNA material” means any biological material from which a DNA profile may be obtained;

“DNA profile”, in relation to a person, means information comprising a set of identification characteristics of the non-coding part of DNA derived from an examination and analysis of a sample of biological material that is clearly identifiable as relating to the person and that is capable of comparison with similar information derived from an examination and analysis of another sample of biological material for the purpose of determining whether or not that other sample could relate to that person;

“elimination index” in relation to the investigation division of the National DNA Register, shall be construed in accordance with section 8(2);

“end of the notification period”, in relation to a sex offender, means the end of the period for which he is subject to the requirements of Part VII of the *Sexual Offences Act*;

“the expiry of the sentence”, in relation to an offender other than a sex offender, means—

- (a) in the case of an offender falling under paragraph (a) or (b) of section 29(2), the expiry of the term of imprisonment imposed by a court on him in respect of the offence concerned;
- (b) in the case of an offender falling under section 29(2)(c) or in the case of a former offender falling under section 30(1), the expiry of the term of imprisonment determined by the Court in respect of the offence concerned of which he was convicted in a jurisdiction other than Jamaica—
 - (i) on his transfer to Jamaica and imprisonment in a correctional centre or a juvenile correctional centre in Jamaica; or
 - (ii) on his committal to a correctional centre or a juvenile correctional centre in Jamaica, as the case may be;
 - (iii) on his extradition or deportation to Jamaica;
- (c) in relation to a term of imprisonment the whole or part of which is suspended, the end of the period for which the offender would have been imprisoned were the sentence not suspended (not taking into account any possibility of parole or other discount);

“finger print” includes a palm print and a foot print;

“Force” means the Jamaica Constabulary Force;

“forensic analyst” means a person who is qualified and assigned to carry out forensic science analyses on behalf of the Custodian;

“Forensic Institute” means the Institute of Forensic Science and Legal Medicine;

“forensic science laboratory” means a laboratory whether in Jamaica or overseas that is so designated by the Minister;

“forensic testing”, in relation to a sample, means the examination and analysis of the sample and the carrying out of biochemical or other scientific tests and techniques used in connection with the detection and investigation of crime or the identification of persons, as may be appropriate, on the sample and, if appropriate, includes the generation of a DNA profile from the sample in respect of a person;

“functions” include duties and powers;

“guardian” in relation to a child, including a protected person who is a child, means any person who, in the opinion of a court having cognizance of any matter in relation to the child, or in which the child is concerned, has for the time being charge of or control over the child;

“identification division”, in relation to the National DNA Register, shall be construed in accordance with section 8(3);

“inadequately labelled”, in relation to a sample, means that the Custodian has determined that the sample is incorrectly labelled or is labelled in such a manner that it is not possible to identify with certainty the person from whom the sample was taken;

“informed consent” has the meaning assigned to it in section 14;

“insufficient”, in relation to a sample, means, subject to subsection (3), that the Custodian has determined that the sample is or has proved to be insufficient in quantity or quality for the purpose of enabling information to be produced by the means of DNA analysis used or to be used in relation to the sample for the forensic testing of it;

“intimate sample” includes any of the following taken, or caused to be taken, from a person under this Act—

- (a) a sample of—
 - (i) blood;
 - (ii) urine;
 - (iii) semen;
 - (iv) tissue fluid obtained by breaking the skin; or
 - (v) pubic hair;
- (b) a swab, washing or sample taken from any part of a person’s genitals or bodily orifice other than the mouth;
- (c) a dental material; or
- (d) foetus or products of conception;

“investigation division”, in relation to the National DNA Register, shall be construed in accordance with section 8;

“juvenile correctional centre” has the meaning assigned to it by section 2 of the *Corrections Act*;

“match”, in relation to two DNA profiles, 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 that probability can be indicated statistically;

“member of the staff of the Forensic Institute” means a public officer who is assigned to perform duties in the Forensic Institute;

“mental disorder” means—

- (a) a substantial disorder of thought, perception, orientation or memory which grossly impairs a person’s behaviour, judgment, capacity to recognize reality or ability to meet the demands of life which renders a person to be of unsound mind; or
- (b) mental retardation where such a condition is associated with abnormally aggressive or seriously irresponsible behaviour, and “mentally disordered” shall be construed accordingly;

“Minister” means the Minister with responsibility for national security;

“missing person” means a person—

- (a) who, whether before or after the commencement date, is observed to be missing from his normal patterns of life; and
- (b) in relation to whom persons who are likely to have heard from the person are unaware of the whereabouts of the person and the circumstances of the person being missing from his normal patterns of life raises concerns for his safety and well-being;

“missing and unknown persons index”, in relation to the identification division National DNA Register, shall be construed in accordance with section 8(3);

“National DNA Register” means the consolidated forensic DNA databank kept under section 5;

“non-coding part of DNA”, in relation to a person, means the chromosome regions of the person’s DNA that are not known to provide for any functional properties of the person;

“non-intimate sample” means any of the following taken, or to be taken, from a person under this Act—

- (a) a sample of—
 - (i) saliva;
 - (ii) hair, other than pubic hair;
 - (iii) a nail; or
 - (iv) any material found under a nail;
- (b) a buccal swab;
- (c) a skin impression; and
- (d) a swab, washing or sample taken from any part of a person’s body other than a part from which a swab, washing or sample taken would be an intimate sample;

“nurse” means a person whose name is entered in the Register of Nurses established by the *Nurses and Midwives Act*;

“parent”, in relation to a protected person or a child, means—

- (a) in a case in which one parent has the sole custody, charge or care of the person or child, that parent;
 - (b) in a case in which the person or child has been adopted under the *Children (Adoption of) Act* (or, if adopted in a jurisdiction other than Jamaica, his adoption is recognized under the law of Jamaica), the adopter or either of the adopters or the surviving adopter; and
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(c) in any other case, either parent;

“person” means an individual or a body;

“place of detention” means any place where a person can be lawfully deprived of his liberty;

“protected person” means, subject to subsection (2), an adult or a child who, by reason of a mental disorder, intellectual impairment, physical disability, illness or injury lacks the capacity to—

- (a) understand the general nature and effect of the taking of a sample from the adult or child;
- (b) indicate (by speech, sign language or any other means of communication) whether or not he consents to a sample being taken from the adult or child; or
- (c) guard himself against violence, exploitation or abuse, whether physical, sexual or emotional, by another person;

“qualified person” means—

- (a) where an intimate sample is being taken or is to be taken—
 - (i) a phlebotomist or Medical Laboratory Technologist registered under the *Professions Supplementary to Medicine Act*;
 - (ii) a registered nurse or nurse practitioner registered under the *Nurses and Midwives Act* acting under the supervision of a registered medical practitioner;
 - (iii) a registered medical practitioner;
- and

(iv) any other person who, in the opinion of the Chief Medical Officer, is qualified to take DNA material for forensic science analyses;

(b) where a non-intimate sample is being taken or is to be taken, a detention officer;

“quality assurance” means systematic actions necessary to demonstrate that a product or service meets the specified requirements for quality;

“reference index”, in relation to the investigation division of the National DNA Register, shall be construed in accordance with section 8(2);

“registered dentist” means a person registered as a dentist in accordance with the *Dental Act*;

“registered medical practitioner” means a person who is a registered medical practitioner within the meaning of section 2 of the *Medical Act*;

“registrable particulars”, in relation to a person, means the name, description, age, sex, dental records or photograph of, or document relating to, the person and any other particulars that may be relevant or useful in the identification of that person;

“regulation”, in relation to DNA material, includes the collection, packaging, transportation, storage, analysis, preservation, use, retention and disposal of the DNA material and the deletion and removal from the National DNA Register of DNA of samples, profiles, registrable particulars or other information;

“relative” means a spouse, an ancestor, a lineal descendant, or a brother or a sister or a descendant of a brother or a sister;

“relevant offence” means an offence punishable by a term of imprisonment;

“sample” means a sample of DNA material taken from a person, or caused to be taken from a person, under this Act, a bodily sample, a crime scene sample and a sample taken, or caused to be taken from the clothing or other belongings of the person or from things reasonably believed to belong to, or to have been used by, the person or with which the person is reasonably believed to have been in contact;

“search”, in relation to a person’s DNA profile or registrable particulars, means a check against other DNA profiles or registrable particulars;

“sex offender” means a person who has been convicted of an offence under the *Sexual Offences Act* and who is subject to the requirements under Part VII of that Act;

“skin impression”, in relation to a person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole, or any part, of his body;

“single woman” or “single man”, used with reference to the definition of “spouse”, includes a widow or widower, respectively, and a divorcee;

“spouse” includes—

- (a) a single woman who, for a period of not less than five years, has cohabited with a single man as if she were in law his wife; and
- (b) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband;

“Superintendent” means a person appointed under section 7 of the *Corrections Act* as the Superintendent of an adult correctional centre;

“suspected person” means a person who—

- (a) has been arrested on suspicion of being involved in a relevant offence;
- (b) is charged with a relevant offence; or
- (c) has been summoned to appear before a court for a relevant offence;

“temporary release”, in relation to an offender, means the lawful release or lawful absence of the offender from a place of detention for a temporary period;

“tester” means a person qualified to conduct forensic analyses on behalf of a forensic science laboratory;

“unknown deceased person” shall be construed in accordance with section 41;

“unknown person” shall be construed in accordance with section 40;

“volunteer”, in relation to the taking of a sample, means—

- (a) a person, other than a child over the age of sixteen years or a protected person, who volunteers to give a sample under this Act; or
- (b) the parent or guardian of a child under the age of sixteen years or a protected person, who volunteers to the taking of a sample from the child or the protected person under this Act;

“young inmate” means an inmate under the age of eighteen years.

(2) The reference in the definition of “protected person” in subsection (1) to a mental disorder, intellectual impairment or physical disability in relation to a person (including a child) shall

be construed as not including a reference to the person being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances.

(3) References in this Act to a sample being or proving to be “insufficient” within the meaning of subsection (1) include references to where, as a consequence of—

- (a) the loss, destruction or contamination of the whole or any part of the sample;
- (b) any damage to the whole or a part of the sample; or
- (c) the use of the whole or a part of the sample for analysis which produced no results or which produced results some or all of which have to be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of DNA analysis of the sample.

(4) In this Act, references to the mouth of a person shall be construed as including references to the inside of the mouth of the person.

(5) In the application of this Act—

- (a) in relation to a protected person or a child who is married, the references in this Act to a parent or guardian of the protected person or the child shall be construed as references to the spouse of the protected person or the child; and
- (b) the references in this Act to an adult relative of the protected person or the child shall be construed as including references to a parent or guardian of the protected person or the child.

(6) If a person is regarded as a protected person for the purposes of this Act, the person shall not be regarded thereby as lacking capacity for purposes other than those to which this Act relates.

(7) A person shall be regarded as associated with another person if—

- (a) he is a spouse or a former spouse of the person;
- (b) he is an adult relative of the person; or
- (c) he has or has had an intimate relationship with the person.

(8) For the purposes of this Act an offence under the law of a jurisdiction other than Jamaica corresponds to a relevant offence where acts or omissions constituting the offence under the law of that jurisdiction would, if done or made in Jamaica, constitute a relevant offence, and this determination shall be made by a court.

Application of
Act.

3.—(1) This Act applies to relevant offences committed, or believed to have been committed, before, on or after the commencement date.

(2) This Act does not apply to the taking of a finger print under the *Finger Prints Act*.

(3) Except as provided for in this Act, nothing in this Act shall affect the operation of any provision of any other enactment relating to—

- (a) a requirement for a person to provide a bodily sample under that enactment;
- (b) any power exercisable by an authorizing officer or other person under that enactment; or
- (c) the performance by a person of any functions of the person under that enactment.

(4) If a DNA profile is generated from a bodily sample taken from a person under any provision of another enactment, it shall not be entered in the National DNA Register, other than in the crime scene index, unless it is provided for in this Act.

Objects of Act.

4. The principal objects of this Act are to make provision for—

- (a) the taking of samples from persons suspected or convicted of criminal offences for forensic testing;

- (b) the taking of samples from persons suspected or convicted of certain criminal offences for the purpose of generating DNA profiles in respect of those persons to be entered in the investigation division of the National DNA Register;
- (c) the regulation of the taking of samples from persons who volunteer to have such samples taken from them for the purpose of the investigation of offences or incidents that may have involved the commission of offences;
- (d) the taking of samples from certain persons for elimination purposes and, where appropriate, the entry of their DNA profiles in the National DNA Register;
- (e) the taking of samples for the purpose of generating DNA profiles in respect of missing persons, unknown deceased persons or unknown persons to be entered in the identification division of the National DNA Register;
- (f) the establishment, maintenance and operation of the National DNA Register by the Forensic Institute; and
- (g) the retention or destruction, in certain circumstances, of samples and the destruction or removal from the National DNA Register, of any DNA profiles generated from those samples.

PART II—Administration

National DNA Register

5. The Director of the Forensic Institute shall, as soon as may be after the commencement date, establish, maintain and operate in accordance with this Act, for and on behalf of the Government of Jamaica, a consolidated forensic DNA databank to be known as the National DNA Register.

Establishment
of National
DNA Register,

6. The National DNA Register shall be used for purposes relating to—

Purpose of
National DNA
Register.

- (a) forensic investigation, primarily in the investigation and prosecution of relevant offences;

- (b) human identification, including—
 - (i) the finding or identification of missing persons;
 - (ii) the identification of seriously ill, or severely injured, persons who are unable by reason of the illness or injury to indicate their identity; or
 - (iii) the identification of the bodies of unknown deceased persons;
- (c) the administration of justice;
- (d) the facilitation of a review of an alleged miscarriage of justice;
- (e) the compilation of statistics;
- (f) the facilitation of the performance by the Custodian of his functions under this Act; and
- (g) any other purpose specified by the Minister, by order published in the *Gazette*.

Form of
National DNA
Register.

7. The National DNA Register may be kept, maintained and operated otherwise than in a legible form, subject to being capable of being converted into a legible form and being used to make a legible copy or reproduction of any entry in the National DNA Register.

Content of
National DNA
Register.

8.—(1) The National DNA Register shall comprise the following divisions—

- (a) the investigation division;
- (b) the identification division; and
- (c) such other division as the Minister may prescribe, for the purposes of this section by order published in the *Gazette*.

(2) The investigation division of the National DNA Register shall contain the following indices of DNA profiles, registrable

particulars and other information that may be used to identify the person from whose biological material each DNA profile was generated (whether before or after the commencement date)—

- (a) the reference index comprising DNA profiles generated by means of DNA analysis from samples, taken from persons whose identities are known;
- (b) the crime scene index comprising DNA profiles generated by means of DNA analysis from samples found at, or recovered from, crime scenes;
- (c) the suspected persons index comprising DNA profiles generated by means of DNA analysis from samples of persons suspected of having committed relevant offences;
- (d) the convicted persons index comprising DNA profiles generated by means of DNA analysis, from samples of persons who have been convicted of relevant offences;
- (e) the volunteers index comprising DNA profiles generated by means of DNA analysis from sample, taken from persons with their informed consent;
- (f) the elimination index comprising the DNA profiles generated from samples taken from persons under Part VII;
- (g) the statistical index comprising DNA profiles, registrable particulars and other information—
 - (i) obtained from the analysis of DNA material taken from persons in accordance with this Act or under an arrangement referred to in section 11(2) (f)(ii); and
 - (ii) kept for statistical purposes and may also be used for analytical purposes in the investigation of relevant offences; and
- (h) such other index as the Minister may prescribe, for the purposes of this section by order published in the *Gazette*.

(3) The identification division of the National DNA Register shall contain the following indices of DNA profiles, registrable particulars and other information that may be used to identify the person from whose biological material each DNA profile was generated or the blood relatives of those persons (whether before or after the commencement date)—

- (a) the missing and unknown persons index comprising DNA profiles derived by means of DNA analysis, from samples taken from—
 - (i) missing persons or blood relatives of missing persons to associate that DNA profile with the missing person;
 - (ii) unknown persons; and
 - (iii) unknown deceased persons;
- (b) such other index as the Minister may prescribe, for the purposes of this section by order published in the *Gazette*.

(4) In addition to the DNA profiles referred to in subsection (1), the National DNA Register shall contain, in relation to each DNA profile in any index, the following information—

- (a) the identity of the person from whose bodily sample the DNA profile was generated;
- (b) where applicable and scientifically possible, the intimate sample or the non-intimate sample used to generate the DNA profile; and
- (c) such other information as the Minister may prescribe, by order published in the *Gazette*.

Rectification
of National
DNA Register.

9.—(1) The Custodian shall rectify an entry in the National DNA Register if—

- (a) a clerical error has been made; or
- (b) sufficient evidence is produced to satisfy the Custodian that the entry made is otherwise incorrect.

(2) On the rectification of an entry to the National DNA Register under subsection (1), the Custodian shall, where necessary, issue a certificate of the particulars so rectified to each person appearing to have a sufficient interest in the rectification of the particulars.

(3) Rectification to the National DNA Register under subsection (1) does not include the alteration of a DNA profile.

Custodian

10. For the purposes of this Act, the Director of the Forensic Institute is designated as the Custodian. Designation of Custodian.

11.—(1) The Custodian shall, in accordance with this Act— Functions of Custodian.

- (a) receive and store—
 - (i) samples from qualified persons and detention officers; and
 - (ii) DNA profiles, including those received from forensic science laboratories;
- (b) keep, maintain and operate the National DNA Register;
- (c) establish and maintain policies and procedures for the sound management of the National DNA Register and for the effective provision of DNA technology and services;
- (d) promote public awareness and understanding of issues related to DNA technology and services;
- (e) ensure the security, integrity and confidentiality of the National DNA Register; and
- (f) perform such other functions pertaining to the administration of this Act as may be assigned to the Custodian, from time to time, by the Minister.

(2) In exercise of the functions conferred under subsection (1), the Custodian shall—

- (a) take appropriate steps to store and preserve any DNA material that is in the custody of the Custodian;

- (b) carry out DNA analyses as may be required under this Act;
- (c) carry out searches of the National DNA Register or the matching of DNA profiles;
- (d) certify DNA profiles;
- (e) put in place methods of electronic storage that accurately record DNA profiles and facilitate easy retrieval of DNA profiles; and
- (f) disclose the report on any DNA analysis requested to—
 - (i) the detention officer making the request for DNA analysis in the course of a criminal investigation or proceeding;
 - (ii) the Central Authority making a request that has been approved in accordance with the *Mutual Assistance (Criminal Matters) Act* or other appropriate entity pursuant to co-operation among governmental, bilateral or multilateral law enforcement agencies in criminal matters; or
 - (iii) a Court.

Permitted
searching.

12.—(1) A member of staff of the Forensic Institute may search the National DNA Register for the purpose of, and to the extent necessary for—

- (a) comparison of DNA profiles permitted in accordance with this Act; and
- (b) the administration of the National DNA Register.

(2) A DNA profile entered in the National DNA Register may not be compared with another DNA profile entered in the National DNA Register except in accordance with this section, unless it is done solely for the purpose of the administration of the National DNA Register.

(3) A DNA profile entered in any index of the investigation division of the National DNA Register may be compared with the DNA profiles entered in all of the indices of that division.

(4) A DNA profile entered in any index of the identification division of the National DNA Register may be compared with the DNA profiles entered in all of the indices of the National DNA Register.

(5) Notwithstanding the provisions of this section, a DNA profile entered in any index of the National DNA Register may be compared with a DNA profile entered in any of the indices of the National DNA Register, where the comparison is for the purposes of gathering intelligence; however the result of the comparison shall be admissible as evidence in any proceedings only to the extent that the court is satisfied that the probative value thereof outweighs its prejudicial effect.

(6) The National DNA Register may not be searched other than by a member of the staff of the Forensic Institute.

(7) A DNA profile not in the National DNA Register may be compared with a DNA profile entered in any of the indices of the National DNA Register.

13. Nothing in this Act shall prevent a member of the staff of the Forensic Institute from processing and using the information in the National DNA Register for statistical purposes and analysis, however, the identity of the persons whose DNA profiles are entered in the National DNA Register shall not be disclosed otherwise than in accordance with this Act. Statistics.

PART III—*Informed Consent*

14.—(1) Subject to subsection (2), in this Act, “informed consent” means— Requirements for informed consent.

- (a) in the case of an adult, who is not a protected person, the consent, in writing, of the adult;

- (b) in the case of a protected person—
 - (i) the consent, in writing, of a parent or guardian of the protected person; or
 - (ii) an order of the Court under section 23 authorizing the taking of a sample from the protected person; and
- (c) in the case of a child (other than a protected person)—
 - (i) who has attained the age of sixteen years—
 - (A) the consent in writing, of the child; or
 - (B) an order of the Court under section 23 authorizing the taking of a sample from the child;
 - (ii) under the age of sixteen years—
 - (A) the consent, in writing, of a parent or guardian of the child; or
 - (B) an order of the Court under section 23 authorizing the taking of a sample from the child.

(2) Where, in relation to the investigation of an offence, a sample is to be taken under this Act from a protected person or a child, the consent, in writing, of a parent or guardian, or other adult relative referred to in subsection (3), as the case may be, of the protected person or the child shall not be sought from that parent or guardian, or that adult relative, of the protected person or the child, as the case may be, if—

- (a) the parent, guardian or adult relative is the victim of the offence or has been arrested in respect of the offence;
- (b) the detention officer has reasonable grounds for suspecting the parent, guardian or adult relative of complicity in the offence; or

- (c) the detention officer has reasonable grounds for believing that the parent, guardian or adult relative is likely to obstruct the course of justice.

(3) Subsection (2) shall not prevent a parent, a guardian or an adult relative of a protected person or a child who does not fall under paragraph (a), (b) or (c) of that subsection from giving the consent required.

(4) Subject to subsection (5), before a detention officer seeks the consent of a parent or guardian of a protected person or a child under the age of sixteen years, or if the child has attained the age of sixteen years, the child, to the taking of an intimate sample from the protected person or the child, the detention officer shall inform the parent or guardian of the protected person or the child (and if the child has attained the age of sixteen years, the child) of the matters referred to in section 15(2) in relation to the protected person or the child.

(5) In this Act, references to a person giving his consent in writing to the taking of a sample under this Act (whether from the person or another person) shall include references to—

- (a) the person signing the prescribed form, to indicate his consent; or
- (b) where the person is unable to write, the person making his mark on the prescribed form, to indicate his consent.

(6) The prescribed form shall be signed in the presence of—

- (a) a Justice of the Peace; or
- (b) where the person giving his consent is represented by an attorney-at-law, his attorney-at-law.

(7) If a parent or guardian of a protected person or a child cannot be located to give informed consent for the purposes of the taking of a sample—

- (a) an adult relative or other adult reasonably named by the parent or guardian, or a child of the protected person

who is an adult, may, subject to subsection (2), give that consent; or

- (b) the written consent of the Children's Advocate shall be sought and, if granted, the consent shall be signified by the Children's Advocate or a person nominated by the Children's Advocate, on the prescribed form in the presence of a Justice of the Peace.

(8) If in the opinion of the authorized officer the person who is required to give informed consent to a request to take a sample is not able to understand in English, or is otherwise unable to communicate orally, the information required to be given to the person under subsection (4) shall be read with the assistance of an interpreter.

(9) References in this section to "Court" are references to the Resident Magistrate's Court or the Supreme Court.

Procedures
relating to
taking of
samples
generally.

15.—(1) In order to take a sample from any person the following shall apply—

- (a) to take a non-intimate sample, informed consent may be given but if informed consent is not given or is subsequently withdrawn, then reasonable force may be used to obtain the non-intimate sample;
- (b) to take an intimate sample, informed consent may be given but if informed consent is not given or is subsequently withdrawn, an order from the Court shall be sought.

(2) Before a detention officer seeks the consent of a person from whom a sample is required to the taking of the sample or the detention officer causes the sample to be taken, from the person, the detention officer shall inform the person of the following—

- (a) if the person refuses to consent to the taking of a non-intimate sample, or if consent is given and is subsequently withdrawn by the person, the non-intimate sample may be taken by reasonable force in accordance with section 25; or

- (b) if the person refuses to consent to the taking of the intimate sample, or if consent is given and is subsequently withdrawn by the person, an order of the Court for the taking of the sample may be applied for in accordance with this Act.

16. The information to be given under this Act shall, in the case of a child or protected person, be given to the extent that it is practicable to do so in a manner and in language that is appropriate to the age and level of understanding of the child and the level of understanding of the protected person.

Giving information under the Act to protected persons or children.

17.—(1) A sample shall not be taken from a protected person or a child under this Act, except where any of the following persons is present while the sample is being taken—

Presence of certain persons while taking samples from protected persons or children.

- (a) a parent or guardian of the protected person or child, or if appropriate, an adult relative who attends at the place of detention or other adult reasonably named by the parent or guardian; or
- (b) in the absence, or the exclusion under subsection (3) or the removal under subsection (4), of a person referred to in paragraph (a), another adult (not being a detention officer), and a Justice of the Peace is present while the sample is being taken, unless the protected person or child indicates that he does not wish to have the person present.

(2) The Justice of the Peace referred to in subsection (1)(b) shall, in so far as is practicable, be of the same sex as the person from whom the sample is to be taken, or is being taken.

(3) An authorizing officer at the place of detention may authorize the exclusion of a parent or guardian of a protected person or a child, or adult relative referred to in subsection (1)(a) who attends at the place of detention, in which the protected person or child is detained, from the place where the sample concerned is to be taken, or is being taken if—

- (a) the parent or guardian of the protected person or child, or the adult relative who attends at the place of detention,

is the victim of the offence in relation to which the protected person or child is detained;

- (b) the parent or guardian of the protected person or child, or the other adult who attends at the place of detention, has been arrested in respect of that offence;
- (c) the authorizing officer has reasonable grounds for suspecting the parent or guardian of the protected person or child, or the adult relative who attends at the station, of complicity in that offence; or
- (d) the authorizing officer has reasonable grounds for believing that the parent or guardian of the protected person or child, or the adult relative who attends at the station, is likely to obstruct the course of justice.

(4) An authorizing officer at the place of detention may authorize the removal of a parent or guardian of a protected person or a child, or other adult referred to in subsection (1)(a), as the case may be, who attends at the place of detention in which the protected person or child is detained, from the place where the sample concerned is to be, or is being taken, if he attempts without reasonable cause to obstruct the taking of the sample.

(5) Before a detention officer takes a sample or causes a sample to be taken, from a protected person or a child, the detention officer shall, if it is reasonably practicable to do so, inform a parent or guardian of the protected person or child other adult referred to in subsection (1)(a), who—

- (a) attends at the place of detention; and
- (b) is not excluded under subsection (3) from the place where the sample is to be, or is being, taken,

of the matters referred to in section 15(2), in relation to the protected person or child.

(6) Subsection (5) shall not apply in relation to the taking of a sample from a protected person or a child if a parent or guardian of the protected person or child has, by virtue of section 14(4), been informed of the matters referred to in section 15(2) in relation to the protected person or child.

PART IV.—*Taking of Samples from Persons in
Detention*

18. Subject to this Act, a detention officer shall not, after the commencement date, take a sample, or cause a sample to be taken, for forensic testing from a person who is detained for a relevant offence other than in accordance with this Part.

Power to take
samples from
persons in
detention.

19.—(1) Subject to subsection (2), an authorizing officer at the place of detention in which a person is detained for a relevant offence shall, as soon as practicable after the detention of the person begins, determine whether or not the person is a protected person for the purposes of this Part.

Determination
of protected
person for
purposes of
Part IV.

(2) Where—

- (a) an authorization to take an intimate sample under section 21 from a person is given; and
- (b) an authorizing officer at the place of detention is of the opinion that the person may be a protected person,

the detention officer shall arrange to have the condition of the person assessed by a registered medical practitioner for the purpose of certifying whether or not the person is a protected person.

(3) A certificate provided by a registered medical practitioner under subsection (2) shall specify the reasons for the registered medical practitioner concluding that the person concerned is or is not a protected person.

(4) Before an authorizing officer seeks the consent of a person from whom an intimate sample is required to the taking of the sample or the authorizing officer takes the sample, or causes the sample to be taken, from the person, the authorizing officer shall inform the person of the following—

- (a) the nature of the offence in the commission of which it is suspected that the person has been involved;
- (b) that an authorization to take the sample from the person has been given under subsection (2)(a) and the grounds on which it has been given;

- (c) that in a case in which an intimate sample already taken from the person has proved to be insufficient—
 - (i) that that sample has proved to be insufficient; and
 - (ii) that either—
 - (A) another authorization under subsection (2)(a) is not required; or
 - (B) an authorization to take a second intimate sample from him has been given, in accordance with section 26, under subsection (2)(a) and the grounds on which it has been given.

Taking of non-intimate samples from persons in detention.

20.—(1) Subject to this Act, a detention officer may take a non-intimate sample, or cause a non-intimate sample to be taken, under this section from a person who is detained for a relevant offence for the purposes of the generation of a DNA profile in respect of the person to be entered in the reference index.

(2) A non-intimate sample may be taken under this section only if—

- (a) informed consent has been given, in writing, to the taking of sample; or
- (b) an authorizing officer authorizes it be taken for the purposes specified in subsection (1).

(3) An authorization to take a non-intimate sample under this section shall not be given unless the authorizing officer giving it has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in the commission of the relevant offence in respect of which he is detained;
- (b) for believing that the sample will tend to confirm or disprove the involvement of that person in the commission of the relevant offence concerned; and

- (c) that the results of the forensic testing of the sample may be given in evidence in any proceedings.

21.—(1) Subject to this Act, a detention officer may cause to be taken, an intimate sample under this section from a person who is detained for a relevant offence for the purpose of the generation of a DNA profile in respect of the person to be entered in the reference index.

Taking of intimate samples from persons in detention.

(2) An intimate sample may be taken under this section only if—

- (a) an authorizing officer at the place of detention authorizes it to be taken for the purposes specified in subsection (1); and
- (b) informed consent has been given, in writing, to the taking of the intimate sample.

(3) An authorization to take an intimate sample under this section shall not be given unless the authorizing officer giving it has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the intimate sample is to be taken in the commission of the relevant offence in respect of which he is detained; and
- (b) for believing that the intimate sample will tend to confirm or disprove the involvement of that person in the commission of the relevant offence concerned.

(4) If a person expressly withdraws the informed consent given under subsection (2)(b), or if the withdrawal of that consent can reasonably be inferred from the conduct of the person, before or during the taking of an intimate sample under this section—

- (a) that withdrawal of consent shall be treated as a refusal to give the informed consent to the taking of the sample under this section;

- (b) an order of the Court for the taking of the sample may be applied for in accordance with this Act; and
- (c) the provisions of this Part shall apply accordingly.

(5) A withdrawal under subsection (4) of the informed consent given under subsection (2)(b) shall be recorded in writing by a detention officer as soon as practicable after such withdrawal.

(6) The informed consent given under subsection (2)(b) to the taking of an intimate sample under this section may not be withdrawn after the sample has been taken.

(7) For the purposes of section 20 and this section, a sample taken from a person includes a sample taken from the person that consists of matter from the body of another person.

Authorization
for taking of
intimate
sample from
protected
persons and
children.

22.—(1) If—

- (a) a detention officer is unable, having made reasonable efforts to do so, to contact a parent or guardian of a protected person who is detained for a relevant offence for the purposes of ascertaining whether or not that parent or guardian consents to the taking of an intimate sample from the protected person or child under this Part;
- (b) a parent or guardian of a protected person or a child who is detained for a relevant offence indicates to a detention officer at the place of detention that the parent or guardian cannot or will not attend at the place of detention within a reasonable time for the purposes of giving consent to the taking of an intimate sample from the protected person or child under this Part;
- (c) subject to section 3(3), the circumstances referred to in section 14(2) exist in relation to a parent or guardian of a protected person or a child;
- (d) a parent or guardian of the protected person or child refuses to consent to the taking of an intimate sample from the protected person or child under this Part; or

- (e) a protected person or a child does not have, or an authorizing officer at the place of detention in which the person is detained cannot, having made reasonable efforts to do so, ascertain within a reasonable period whether he has, a living parent or guardian from whom consent to the taking of an intimate sample from the protected person or child may be sought under this Part,

the detention officer may apply to the Court for an order authorizing the taking of an intimate sample from the protected person or child.

(2) A detention officer who intends to make an application under subsection (1) shall inform the protected person or child (if the child has attained the age of sixteen years) and, if it is reasonably practicable to do so, a parent or guardian of the protected person or child, other than a parent or guardian to whom section 14(2) applies, of that intention.

(3) The Court may order that—

- (a) an application to take an intimate sample under subsection (1) shall be in camera if the Court considers it desirable in the interests of justice to do so; or
- (b) a parent or guardian of the protected person concerned to whom section 14(2) applies shall be excluded from the Court during the hearing of the application, if—
 - (i) on an application in that behalf by the detention officer, the Court is satisfied that it is desirable to do so in order to avoid a risk of prejudice to the investigation of the relevant offence in respect of which the protected person or child concerned is detained; or
 - (ii) the Court considers that it is otherwise desirable in the interests of justice to do so.

(4) The Court shall, for the purposes of determining an application under subsection (1), have regard to the following matters before making an order under this section—

- (a) the grounds on which the authorization under section 21(2)(a) was given for the taking of an intimate sample from the protected person or child concerned;

- (b) if appropriate, the reasons (if any) that a parent or guardian of the protected person or child concerned (other than a parent or guardian to whom section 14(2) applies) gave for refusing to consent to the taking of an intimate sample from that protected person or child;
- (c) the nature of the offence in respect of which the protected person or child concerned is detained; and
- (d) whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the protected person or child concerned, the interests of the victim of the offence in respect of which the protected person or child concerned is detained and the protection of society, to make an order authorizing the taking of an intimate sample from the protected person or child concerned.

(5) If, on an application under subsection (1), a parent or guardian of the protected person or child concerned applies to be heard by the Court, an order shall not be made under this section unless a reasonable opportunity has been given to the parent or guardian, as the case may be, of that person to be heard.

(6) The Court may, if it considers it appropriate to do so, make an order authorizing the taking of an intimate sample from the protected person or child concerned in accordance with this Part.

(7) If, on an application to take an intimate sample under subsection (1) in relation to a protected person or a child who is detained, the Court makes an order under subsection (6), the Court may, on an application in that behalf by a detention officer, issue a warrant authorizing the detention of the protected person or child concerned for such further period as the Court may determine for the purpose of having the intimate sample taken from that protected person or child.

(8) When an intimate sample has been taken from a protected person or a child who is detained under a warrant issued under subsection (7), the person or child shall be released from custody forthwith, unless his detention is authorized otherwise than under this section.

23.—(1) A detention officer may apply to the Court for an order for the taking of an intimate sample from a person who has refused consent thereto or who, having given consent has withdrawn it prior to the sample being taken.

Application for court order authorizing taking of intimate sample from person who is not a protected person or a child.

(2) The Court shall, for the purposes of determining an application under subsection (1), have regard to whether it would be in the interests of justice in all the circumstances of the case, having due regard to the best interests of the person concerned, the interests of the victim of the offence in respect of which the person concerned is detained and the protection of society, to make an order authorizing the taking of an intimate sample from the person concerned.

(3) References in this section to “Court” are references to a Resident Magistrate’s Court or the Supreme Court.

24.—(1) A sample of blood or pubic hair or a swab from a genital region or a body orifice other than the mouth may be taken under this Part only by a qualified person.

Persons authorized to take intimate samples.

(2) Dental material may be taken under this Part only by a registered dentist or a registered medical practitioner.

(3) An intimate sample other than a sample of blood or dental material shall, in so far as practicable, be taken by a person who is of the same sex as the person from whom the sample is being taken under this Part.

25.—(1) This section applies where—

- (a) a person detained for a relevant offence refuses consent to the taking of a non-intimate sample or, having given

Use of reasonable force to take sample under Part IV.

such consent withdraws consent prior to the sample being taken; or

- (b) a Court has ordered the taking of an intimate sample from a person detained for a relevant offence.

(2) One or more detention officers may use such force as is reasonable necessary to enable the sample to be taken, or to prevent the loss, destruction or contamination of the sample.

(3) Subsection (2) shall not apply to a child under the age of twelve years.

(4) The power referred to in subsection (2) shall not be exercised unless an authorizing officer authorizes it.

(5) Where it is intended to exercise the power conferred by subsection (2), one of the detention officers concerned shall inform the person from whom the sample is to be taken—

- (a) of that intention; and
- (b) that an authorization to do so has been given under subsection (4).

(6) A sample to be taken under this section shall be taken in the presence of an authorizing officer and that authorizing officer shall determine the number of detention officers that is reasonably necessary for the purposes of subsection (2).

(7) The taking of a sample under this section shall be recorded audio visually or witnessed by a Justice of the Peace or an authorizing officer.

Re-taking of
certain
samples under
Part IV in
certain circum-
stances.

26.—(1) Where—

- (a) a person is detained for a relevant offence; and
- (b) a sample taken from the person during the period of detention is insufficient or is inadequately labelled,

a second sample may be taken from the person in accordance with the procedure applicable to the taking of the first sample, as provided

for in this Part, and no further sample should be taken without the consent of the person, unless the Court so orders.

(2) Nothing in this section shall require the second non-intimate sample to be taken from a person under this section to be of the same type of biological material as the first sample taken from the person which was insufficient or was inadequately labelled, however, the second sample concerned is one that if it were the first sample would be permitted to be taken under this Part.

*PART V—Taking of Samples from Volunteers to
Generate DNA Profiles*

27.—(1) A detention officer may request any person whether or not he is detained for a relevant offence to have a sample taken from him under this section for the purpose of generating a DNA profile in respect of that person in relation to the investigation of a relevant offence, and the DNA profile so generated may be entered into the National DNA Register.

Taking of
samples from
volunteers to
generate DNA
profiles.

(2) A person who is a victim, or is reasonably considered to be a victim, of a relevant offence being investigated may be a volunteer.

(3) Subject to Part III, a detention officer shall inform a volunteer of the following before seeking his consent to the taking of a sample under this section, or before the detention officer takes, or causes to be taken, such a sample from him—

- (a) that the volunteer is not obliged to have the sample taken from him;
- (b) in a case in which a sample has already been taken under this section from the volunteer, a second or further sample is required to be taken from him for a reason that shall be told to the volunteer, being a reason falling within section 28;
- (c) that the sample will be used to generate a DNA profile in respect of the volunteer for the purposes of the investigation of the relevant offence in relation to which it is being taken; and

(d) that the sample and the DNA profile generated from the sample in respect of the volunteer may be retained or destroyed in accordance with this Act.

(4) Subject to Part III, a sample shall not be taken from a volunteer under this section, unless he consents in writing to the taking of the sample, which consent shall specify the relevant offence that is being investigated to which the consent relates.

(5) Subject to this Act, a detention officer may take, or cause to be taken, from a volunteer a sample under this section.

(6) A sample may be taken under this section from a volunteer in a place of detention or, subject to the agreement of the detention officer taking the sample, at a place designated by the volunteer.

(7) Subject to Part III, if a volunteer expressly withdraws consent given under subsection (4) before or during the taking of a sample under this section, that withdrawal of consent shall be treated as a refusal to give consent to the taking of the sample under this section if the volunteer duly complies with subsection (8).

(8) A withdrawal under subsection (7) of consent given under subsection (4) shall be confirmed in writing by the volunteer as soon as practicable after the withdrawal.

(9) A refusal of a person to give consent under subsection (4) shall not of itself constitute reasonable cause to suspect the person of having committed the offence concerned for the purpose of arresting and detaining him in connection with the investigation of that offence.

Re-taking of
samples under
Section 27.

28. Where a sample taken from a person under section 27 is insufficient or was inadequately labelled a second or further sample may be taken from him in accordance with that section.

PART VI—*Taking of Samples From Other Persons
for Convicted Persons Index*

29.—(1) A sample may be taken under this section from a person to whom this section applies (in this Act called an “offender”).

Taking of
samples from
offenders.

(2) This section applies to a person—

- (a) who has been convicted of a relevant offence before the commencement date and, at that date, a term of imprisonment or sentence of detention has been imposed by a Court on the person in respect of that offence and—
 - (i) the person is serving the sentence in a correctional institution or if he is a young inmate, in a juvenile correctional centre;
 - (ii) the person is temporarily released; or
 - (iii) the sentence is otherwise still in force or current;
- (b) who at any time before or after the commencement date has been or is convicted of a relevant offence and, after that date, a term of imprisonment or sentence of detention is imposed by a court on the person in respect of the offence;
- (c) who—
 - (i) at any time before or after the commencement date has been or is convicted in a jurisdiction other than Jamaica of an offence; and
 - (ii) at any time after the commencement date, is serving a term of imprisonment or sentence of detention, or the balance thereof, in a correctional institution in Jamaica in respect of that offence under—
 - (A) a warrant issued by the Supreme Court authorizing the bringing of the person into Jamaica and his

imprisonment or detention in a correctional institution in Jamaica;
or

- (B) an order of the Supreme Court committing the person to a correctional institution,

however, when issuing the warrant or making the order, as the case may be, the offence that the Supreme Court determined is a relevant offence under the laws of Jamaica that corresponds to the offence for which he was convicted in that jurisdiction; or

- (d) who may fall under paragraph (a), (b) or (c) and who, on or at any time after the commencement date is, or becomes, subject to the requirements of Part VII of the *Sexual Offences Act*.

(3) Subject to this Act, a correctional officer may take a sample or cause a sample to be taken, under this section from an offender who is in a correctional institution.

(4) A sample taken from an offender under this section shall be used to generate a DNA profile in respect of the offender to be entered in the convicted persons index of the National DNA Register.

(5) A sample under this section shall be taken from an offender as soon as practicable after the commencement date or after he becomes an offender, whichever occurs first and, in any event, the sample may only be taken from him before the expiry of the sentence concerned or, if he is a sex offender to whom Part VII of the *Sexual Offences Act* applies, unless he consents in writing to the taking of the sample before the end of the notification period.

(6) A sample under this section shall be taken from an offender referred to in subsection (2) in the correctional institution in which he is serving his sentence, but only if the Superintendent of the correctional institution authorizes it to be taken.

(7) Subject to this Act, a detention officer may take a sample or cause a sample to be taken, under this section from an offender who is not in a correctional institution on account of his being on temporary release.

(8) A sample may be taken under this section from an offender who is not in a correctional institution on account of his being on temporary release only if an authorizing officer authorizes it to be taken.

(9) A detention officer shall inform an offender of the following matters before taking or causing a sample to be taken under this section from the offender—

- (a) that an authorization to take the sample from him has been given under subsection (6) or (8), as the case may be;
- (b) if appropriate, that where the offender fails or refuses to allow the sample to be taken from him, reasonable force may be used in accordance with section 33 to take the sample.

(10) In this section, references to a term of imprisonment imposed by a court on an offender include references to—

- (a) a term of imprisonment imposed by a court on the offender the execution of the whole or a part of which is suspended;
- (b) a term of imprisonment imposed by a court on the offender following the contravention by him of a condition in an order made by the Court; and
- (c) a sentence of detention imposed by a court on the offender when he was a child, where he is transferred to an adult correctional centre to serve the remainder of the sentence.

30.—(1) Subject to this section, a sample may be taken under section 29 from a person, including a child (in this Act called a “former offender”)—

Former
offenders.

- (a) who at any time before the commencement date would, if this Act had been in operation at that time, have been an

offender within the meaning of section 29 but who, on the commencement date, was not an offender;

(b) who at any time after the commencement date was an offender and—

(i) a sample under section 29—

(A) was not taken from him; or

(B) was taken from him but the sample is insufficient;

(ii) who is no longer an offender; or

(c) who—

(i) whether before or after the commencement date has been or is convicted, in a jurisdiction other than Jamaica, of an offence that corresponds to a relevant offence and has been or is sentenced in that jurisdiction in respect of that offence; and

(ii) is no longer subject to that sentence.

(2) A person is not a former offender if, to the extent that it can reasonably be ascertained, his DNA profile is in the reference index.

(3) A person shall not be treated as a former offender if the rehabilitation period specified under the *Criminal Records (Rehabilitation of Offenders) Act*, has elapsed since the expiry of the sentence for a relevant offence of which the person has been convicted or, if more than one such offence, the expiry of the sentence for the relevant offence that was the last to expire.

(4) This section shall, in relation to a relevant offence of which a person was convicted when he was a child, apply to the conviction for the offence concerned—

(a) in the case of a conviction in Jamaica, only if the offence concerned is one that is required to be tried by the Resident Magistrate's Court or the Supreme Court; or

- (b) in the case of a conviction in a jurisdiction other than Jamaica, only if the offence concerned is one that corresponds to an offence that is required to be tried by the Resident Magistrate's Court or the Supreme Court.

(5) In this section, references to a relevant offence shall include references to an offence under the law of a jurisdiction other than Jamaica that corresponds to a relevant offence.

(6) In this section, references to the end of the notification period in relation to a person who was convicted of a sexual offence, shall include references to the end of the equivalent period under the law of jurisdiction other than Jamaica in which the person was convicted during which information of a similar nature to that required to be notified by a person who is subject to the notification obligations under the law of that jurisdiction.

31.—(1) A sample taken under this section from a former offender shall be used to generate a DNA profile in respect of the former offender to be entered in the investigation division of the National DNA Register. Taking of samples from former offenders.

(2) If an authorizing officer is satisfied that—

- (a) a person is a former offender; and
- (b) it is in the interests of the protection of society, and it is desirable for the purpose of assisting the police in the investigation of offences, to have a sample under this section taken from the person,

the authorizing officer may authorize the making of a request of the person under subsection (3).

(3) A detention officer may, if so authorized under subsection (2), request a former offender in respect of whom the authorization under that subsection has been given to have a sample under this section taken from him.

(4) Where a former offender accedes to a request under subsection (3), a detention officer may take or cause to be taken an intimate sample from the former offender, and sections 20 and 21 shall apply, as the case may be, in connection with the taking of the sample.

(5) If a former offender of whom a request is made under subsection (3) does not comply with the request, an application may be made for an order under subsection (6).

(6) The Court may, if it is satisfied that it is in the public interest to do so, make an order authorizing the taking of a sample under this section from a former offender and in this regard the Court shall consider—

- (a) the number of relevant offences of which the person has been convicted;
- (b) the seriousness of the relevant offence of which the person has been convicted;
- (c) the nature of the relevant offence of which the person has been convicted;
- (d) the duration or term of imprisonment or sentence of detention imposed on the person in respect of the relevant offence of which he has been convicted;
- (e) the period that has elapsed since the expiry of the sentence for the relevant offence or, if more than one such offence, the expiry of the sentence for the relevant offence that was the last to expire, or if the person was convicted of a sexual offence, the period that has elapsed since the end of the notification period or, if more than one such period, the end of the last one;
- (f) in relation to any offence of which the person was convicted when he was a child if the conviction is one to which this section applies, the age of the person at the time of such conviction;

(g) any other matter that the Court considers appropriate.

(7) In making an order under subsection (6), the Court may make such ancillary orders and give directions in support thereof as the Court considers appropriate, taking into account section 20 or 21, as the case may be.

(8) Where the Court has made an order under subsection (6), a detention officer may take or cause to be taken a sample from the former offender in accordance with the order.

(9) Subject to subsection (10), a former offender who fails or refuses, without reasonable cause, to comply with an order under subsection (6), commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court—

- (a) if the person is not a child, to a term of imprisonment not exceeding one year; and
- (b) if the person is a child, to a sentence of detention not exceeding six months.

(10) It shall be a defence in proceedings for an offence under subsection (9) for the person charged with the offence to show that he is not a former offender.

32.—(1) A sample may be taken under this section 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 investigation division of the National DNA Register.

Taking of sample from deceased person suspected of commission of relevant offence.

(2) The owner or occupier of the place in which the body of the deceased person concerned is located shall permit entry to the place for the purpose of having a sample under this section taken from the body of that person.

(3) A Justice of the Peace may, on an application in that behalf by a constable, issue a warrant—

- (a) authorizing the entry and search of a place where it is believed the body of the deceased person concerned is located; and

- (b) if appropriate, the seizure of the body of that person, as are necessary for the taking of the sample concerned.

(4) A warrant issued under subsection (3) shall authorize that constable, accompanied by such other persons, as the constable thinks necessary, to—

- (a) enter, at any time or times, on production if so requested of the warrant, and if necessary by the use of reasonable force, the place named in the warrant; and
- (b) search that a place to locate the body of the deceased person and, if appropriate, to seize the body of the deceased person.

(5) Subject to this Act, a registered medical practitioner or other person prescribed for that purpose may take, or cause to be taken, a sample under this section.

(6) Nothing in this section authorizes the exhumation of the body of a deceased person.

(7) In this section—

- (a) “place” includes a dwelling;
- (b) references to “Constable” include a reference to any person upon whom the powers of a Constable have been conferred under any enactment, where such enactment has been designated by the Minister by order for the purposes of this section.

Use of
reasonable
force to take
sample from
offender or
young inmate.

33.—(1) Without prejudice to the generality of section 29, where an offender who is in a correctional centre fails or refuses to allow a sample to be taken from him under that section, a detention officer or officers assisting that officer, may use such force as is reasonably considered necessary to take the sample or cause it to be taken, or to prevent the loss, destruction or contamination of the sample.

(2) Where a young inmate who is detained in a juvenile correctional centre or another place of detention fails or refuses to allow a sample to be taken from him under that section, a detention

officer may use such force as is reasonably considered necessary to take the sample or cause it to be taken or to prevent the loss, destruction or contamination of the sample.

(3) Where it is intended to exercise the power conferred by subsection (1) or (2), the authorizing officer or other person designated by him for this purpose shall inform the offender concerned of that intention.

(4) The taking of a sample under this section shall be recorded audio visually or witnessed by a Justice of the Peace or an authorizing officer.

34. Where a sample taken from an offender under section 29 or 32 is insufficient, a second or further sample may be taken from him before the expiry of the sentence concerned or, if the offender is a sex offender, before the end of the notification period, in accordance with the procedures under the section concerned.

Re-taking of samples under section 29 or 32 in certain circumstances.

35. Where a sample taken from a former offender under section 31 is insufficient, a detention officer may, within a period of not more than one year from the taking of the sample, request him to have a second or further sample taken from him under that section and the procedures under that section shall apply to the taking of the second or further sample.

Re-taking of samples from former offenders.

PART VII—*Taking of Samples for Elimination Purposes*

36.—(1) A sample taken under this Part from a person shall be used to generate a DNA profile in respect of the person to be entered in the elimination index for the purpose of ascertaining whether that person has contaminated a crime scene.

Taking of samples for elimination purposes.

(2) Subject to this Act, a sample shall be taken under this section from any person referred to in section 37 if he consents, in writing, to having the sample taken from him.

(3) Subject to this Act, a detention officer may take a sample, or cause a sample to be taken under this section from a person referred to in section 37.

(4) Before seeking consent from a person under subsection (2) (not being a relevant person), a detention officer shall notify the person in writing that if he refuses to give such consent, an application may be made to the Court for an order under subsection (5) authorizing the sample to be taken from him.

(5) Where a person referred to in subsection (4) refuses to consent to the taking of a sample, a detention officer may apply to the Court for an order authorizing the taking of a sample from the person, and the Court may make such order if it is satisfied that it is in the interests of justice to do so.

(6) Before seeking consent under subsection (2) from a relevant person, a detention officer shall notify the relevant person in writing that if he refuses to consent to the taking of a sample, the procedures in section 28 may be followed in relation to him.

(7) In this section “relevant person” has the meaning assigned to it under section 37(1).

Direction for
sample to be
taken for
elimination
purposes.

37.—(1) In this section—

“relevant authority” means, in relation to—

- (a) a person under paragraph (a) of the definition of “relevant person”, the Commissioner of Police;
- (b) a person under paragraph (b) of that definition, the Chief of Defence Staff of the Jamaica Defence Force;
- (c) a person under paragraph (c) of that definition, the Commissioner of Corrections;
- (d) a person under paragraph (d) of that definition, the Commissioner of the Independent Investigations Commission;
- (e) a person under paragraph (e) of that definition, the Custodian;
- (f) a person under paragraph (f) of that definition, the person designated by the Minister by order;

“irrelevant person” means—

- (a) a person who is—
 - (i) a member of the Force;
 - (ii) a person who is admitted to training for membership (including as a reserve member) of the Force;
 - (iii) a member of the civilian staff of the Force;
- (b) a member of the Jamaica Defence Force;
- (c) a correctional officer;
- (d) an officer or employee of the Independent Commission of Investigations;
- (e) a person employed at the Forensic Institute;
- (f) an officer or employee or other person employed in or at an organization headed by a person designated under paragraph (f) of the definition of “relevant authority”.

(2) This section applies where a relevant person and has refused to consent to the taking of a sample, in the manner described in section 36.

(3) Where this section applies, a relevant authority may direct the relevant person to permit the sample to be taken from him for the purposes of section 36(1).

(4) A direction under subsection (3) shall be given in writing and the relevant authority shall give, or cause to be given, a copy of it to the relevant person to whom it relates.

(5) Where a relevant person to whom a direction has been given under this section refuses to have a sample taken as directed, a detention officer may apply to the Court for an order authorizing the taking of a sample from the relevant person, and the Court may make such order if it is satisfied that it is in the interests of justice to do so.

Re-taking of
samples under
Part VII.

38. Where a sample taken from a person under this Part is insufficient or was inadequately labelled a second or further sample may be taken from him in accordance with the procedures set out in the section concerned.

**PART VIII—*Taking of Samples from Persons
for Identification Division***

Taking of
samples in
relation to
missing
persons.

39.—(1) A sample may be taken under this section—

- (a) in relation to a missing person who is missing in circumstances referred to in subsection (2), or
- (b) from a person who is an adult relative by blood of a missing person, for the purpose of generating a DNA profile in respect of the person concerned to be entered in the missing and unknown persons index of the National DNA Register to assist with finding or identifying the missing person.

(2) A sample may be taken under this section for the purposes of the investigation by the Force of the disappearance of a missing person if—

- (a) an authorizing officer at the place of detention is satisfied that the circumstances of the disappearance so require; or
- (b) one or more persons are missing following a disaster.

(3) A sample shall be taken under this section from an adult relative of the missing person if the adult relative consents in writing to having such sample taken from him.

(4) Before seeking consent from a person under subsection (3), a detention officer shall notify the person in writing that if he refuses to give such consent, an application may be made to the Court for an order under subsection (6) authorizing the sample to be taken from him.

(5) Where a person referred to in subsection (4) refuses to consent to the taking of a sample, a detention officer may apply to the Court for an order authorizing the taking of a sample from the person, and the Court may make such order if it is satisfied that it is in the interests of justice to do so.

(6) Subject to Part III, if a person referred to in subsection (1)(b) expressly withdraws consent given under subsection (3) before or during the taking of a sample under this section, that withdrawal of consent shall be treated as a refusal to give consent to the taking of the sample under this section, if the person duly complies with subsection (7).

(7) A withdrawal under subsection (6) of consent given under subsection (4) shall be confirmed in writing by the person withdrawing the consent as soon as practicable after such withdrawal.

(8) A sample relating to a missing person that is in the possession or control of the Force or the Custodian arising from the investigation of the disappearance of the missing person may be regarded as a sample lawfully taken in relation to the missing person under this section and subsections (1) to (6) shall apply, with any necessary modifications, to the sample, without limiting the effect of the provisions of this section.

40.—(1) A sample may be taken under this section from a person who is seriously ill or severely injured and who, by reason of the illness or injury, is unable to identify himself (in this section called an “unknown person”) for the purpose of generating a DNA profile in respect of the unknown person to be entered in the identification division of the National DNA Register to assist with identifying that person.

Taking of
samples from
unknown
persons.

(2) A person referred to in subsection (3) may, after notifying the Commissioner of Police, in writing, make an application to the Supreme Court for an order authorizing the Commissioner of Police to cause a sample to be taken under this section from an unknown person.

(3) Any of the following persons may, in relation to an unknown person, make an application to the Supreme Court under subsection (2) in relation to the unknown person, that is to say—

- (a) the Chief Medical Officer;
- (b) the owner or manager of a hospital or nursing home in which the unknown person is receiving care; or
- (c) the Commissioner of Police.

(4) The Supreme Court shall, on an application under subsection (2), make an order authorizing the Commissioner of Police to cause a sample to be taken under this section from the unknown person concerned if the Court is satisfied—

- (a) by the evidence of a registered medical practitioner that the unknown person is suffering from a serious illness, or has sustained a severe injury, by reason of which he is unable to identify himself and that the duration of the inability is uncertain;
- (b) that the taking of a sample from the unknown person under this section, the generation of a DNA profile from the sample in respect of him and the entry of the DNA profile in the identification division may assist with the identification of the unknown person.

(5) Subject to this Act, a registered medical practitioner, a registered nurse or other person prescribed for that purpose may take, or cause to be taken, from the unknown person concerned a sample under this section.

(6) An order of the Supreme Court under subsection (5) shall, be regarded as authorizing the re-taking of a sample under section 42 from the unknown person concerned.

41.—(1) A sample may be taken under this section from the body of a deceased person who has not been identified (in this section called an “unknown deceased person”) for the purpose of generating a DNA profile in respect of the person to be entered in the identification division of the National DNA Register to assist with identifying that person.

Taking of
samples from
bodies of
unknown
deceased
persons.

(2) Subject to this Act, a registered medical practitioner or other person prescribed for that purpose may take, or cause to be taken, a sample under this section from the body of the unknown deceased person concerned.

(3) Nothing in this section shall prevent the use of a sample taken under subsection (2), and the DNA profile generated from it, for the purposes of the investigation of the death of the unknown deceased person concerned and any proceedings arising from the investigation.

42. Where a sample taken from a person under this Part is insufficient or was inadequately labelled a second or further sample may be taken from the person, in accordance with the section concerned.

Re-taking of samples under Part VIII.

43. Nothing in this Part shall affect—

- (a) the operation of any provision of any other enactment; or
- (b) the exercise of any power by an authorizing officer or any other person under any other enactment or the common law, relating to the investigation of offences or investigations relating to the deaths of deceased persons.

Part VIII not to affect provisions or powers relating to investigation of offences or investigations relating to deaths of deceased persons.

PART IX—*Post Collection Procedures*

44. Where there is or will be sufficient amount of a sample for DNA analysis to be carried out by the Custodian but also by or on behalf of the person from whom a sample was taken or is to be taken, the qualified person shall, upon the directions of the Director of Public Prosecutions or the Court (made pursuant to a request by the person or his legal representative) make available to a qualified person engaged at a forensic science laboratory, as soon as practicable, a part of the sample that was taken or is to be taken sufficient for DNA analysis.

Independent testing of sample.

45.—(1) As soon as is reasonably practicable after a sample is taken, the detention officer who has taken the sample or caused the sample to be taken, or his designate, shall ensure that the sample is

Packaging, etc. of samples and other DNA material.

placed in a container (whether comprising a tube, envelope, bag or other receptacle) which—

- (a) is marked with a unique number for the purpose of facilitating the identification of the sample;
- (b) is sealable after the sample is placed in it without interfering with the integrity of the sample; and
- (c) once sealed cannot be opened, whether by cutting, tearing or other means, without leaving visible evidence of having been opened or of an attempt having been made to do so,

and otherwise preserved, stored, sealed, labelled and delivered to the Custodian in the manner required by the Custodian.

(2) A package containing a sample that has been delivered to the Custodian under subsection (1) shall not be opened by any person other than a forensic officer.

(3) The forensic officer shall ensure that the container that has been delivered to the Custodian under subsection (1) and any other DNA material that is being delivered to the Custodian remains stored and labelled and coded, in appropriate containers after it is received, in the manner required by the Custodian.

Forensic DNA
report.

46.—(1) Within seven days of carrying out a DNA analysis on a sample, the forensic analyst shall—

- (a) generate a DNA profile in relation to the sample;
- (b) prepare a forensic report thereon, in writing; and
- (c) shall cause the DNA profile to be included in the National DNA Register.

(2) A forensic report made under subsection (1) shall contain such information as may be prescribed.

PART X—Destruction of Samples and Destruction and Removal of DNA Profiles from National DNA Register

Destruction of
samples in
certain
circumstances.

47.—(1) Subject to subsection (2), a sample taken from a person or a DNA profile generated from the sample shall, if not previously

destroyed, be destroyed in any of the following circumstances not later than the expiration of the period of three months from the date on which such circumstances first apply to the person—

- (a) where proceedings for a relevant offence have been instituted and—
 - (i) the person is acquitted of the relevant offence; or
 - (ii) the charge against the person in respect of the relevant offence is dismissed;
- (b) the person's conviction for the offence concerned in connection with which the sample concerned was taken is quashed or is declared to be a miscarriage of justice by the Court.

(2) A sample or a DNA profile referred to in subsection (1) shall not be destroyed if a Court on the application of the Director of Public Prosecutions, Commissioner of Police, the Commissioner of the Independent Commission of Investigations, is satisfied that it is in the interests of justice that the sample or DNA profile generated be retained and makes an order for its retention for such further period as the Court considers appropriate.

(3) Where an application is made under subsection (2), the applicant shall notify, in writing, the person whose sample or DNA profile is the subject of the application and the person shall have the right to be heard.

(4) Subject to subsections (6) and (8), a person who is required under Part X to destroy, or cause to be destroyed, a sample taken under this Act shall ensure that the sample, and every record relating to the sample insofar as it identifies the person from whom the sample has been taken, are destroyed.

(5) Subject to subsection (8), a person who is required under Part X to destroy, or cause to be destroyed, a DNA profile generated from a sample taken under this Act shall ensure that the

DNA profile, and every record relating to the DNA profile insofar as it identifies the person to whom the DNA profile relates, are destroyed.

(6) Nothing in subsection (1) shall require—

- (a) the removal from the National DNA Register of a DNA profile that may be retained in that National DNA Register in accordance with this Act; or
- (b) the destruction of a record that cannot be included in the National DNA Register that is required to identify the person to whom a DNA profile referred to in paragraph (a) relates.

(7) Subject to subsection (8), the Custodian who is required under Part X to remove, or cause to be removed, a DNA profile from the National DNA Register shall ensure that that Register is altered so that it is no longer possible to identify the person to whom the DNA profile relates.

(8) This section shall operate in a manner that permits the Custodian to retain such records as may be required by him to show that this section has been complied with.

(9) In this section, “record”, in relation to a sample or a DNA profile, includes a copy of a record.

Application to
Court for
destruction of
sample or
DNA profile.

48.—(1) Where proceedings for a relevant offence are not instituted against the person from whom a sample was taken or a DNA profile generated in connection with the relevant offence within a period of eight years from the date on which the sample was taken, the person from whom the sample was taken may apply to the Court for an order that the sample or DNA profile be destroyed.

(2) On an application under subsection (1) for the destruction of a sample, the Court may, if the Court is satisfied that it is in the interests of justice to do so after taking into account the matters referred to in subsection (3), make an order for the destruction of the sample.

(3) The matters referred to in subsection (2) to which the Court shall have regard are the following—

- (a) a decision has not been taken whether or not to institute proceedings against the person for the relevant offence concerned in connection with which the sample was taken or DNA profile generated;
- (b) the investigation of that relevant offence has not been concluded;
- (c) the sample or DNA profile concerned and the results of any testing of it, are likely to be required for the prosecution of an offence connected with the event, incident or circumstances the subject of the offence concerned—
 - (i) for use as evidence in such proceedings;
 - (ii) for disclosure to, or use by, a defendant in such proceedings; or
 - (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings;
- (d) whether the person concerned has any previous conviction for an offence similar in nature or gravity to the offence concerned in connection with which the sample concerned was taken from him;
- (e) the nature and seriousness of that relevant offence;
- (f) whether any alleged victim, or any intended victim, of that relevant offence was at the time of the commission, or alleged commission, of that relevant offence—
 - (i) a child;
 - (ii) a protected person; or
 - (iii) associated with the protected person or child;

- (g) the age of the person concerned at the time the sample concerned was taken from him; and
- (h) any other matter that the Court considers appropriate.

(4) An applicant under subsection (1) shall notify, in writing, the Director of Public Prosecutions, the Commissioner of Police (and where applicable, the Commissioner of the Independent Commission of Investigations), and they shall have the right to be heard.

Duty of
Custodian to
notify
destruction or
removal of
sample, etc.

49. Where a sample or DNA profile is destroyed or removed from the National DNA Register under section 47 or 48, the Custodian shall, by notice, in writing, inform the person from whom the sample was taken or cause the person to be informed, as soon as may be after the sample has been destroyed, of its destruction, or of the removal of the sample or the DNA profile generated from the sample from the National DNA Register.

Dismissal of
charges,
quashing of
convictions
and
determination
of proceed-
ings.

50.—(1) For the purposes of this Part, a charge against a person in respect of a relevant offence shall be regarded as dismissed—

- (a) where, if there is a right of appeal against the dismissal, the time for bringing an appeal against the dismissal has expired;
- (b) any such appeal has been withdrawn or abandoned; or
- (c) on any such appeal, the appeal is dismissed.

(2) In this Part—

- (a) references to a conviction of a person for a relevant offence shall be construed as including references to a conviction of the person for the offence after a re-trial for that offence; and
- (b) references to a conviction of a person for a relevant offence being quashed shall be construed as references to where a court hearing an appeal against the conviction

makes an order quashing the conviction and, if the court is the Court of Appeal, either—

- (i) it does not order the person to be re-tried for the offence concerned; or
- (ii) it does not substitute, for the verdict, a verdict of guilty of another offence that is a relevant offence.

PART XI—*Offences and Penalties*

51. A person commits an offence if he—

Offences relating to samples and DNA profiles.

- (a) knowingly takes a sample or generates a DNA profile in contravention of the provisions of this Act;
- (b) with intent to deceive, swaps a sample or DNA profile;
- (c) wilfully mislabels or mismatches a sample or DNA profile;
- (d) deliberately exposes a sample or DNA profile to the risk of contamination or destruction;
- (e) conducts any unauthorized research on any sample taken or DNA profile generated under this Act;
- (f) falsifies DNA profile;
- (g) knowingly impersonates any person for the purpose of providing or obtaining a sample or a DNA profile;
- (h) except in accordance with the provisions of this Act, discloses or obtains a DNA profile or obtains a sample, from the National DNA Register; or
- (i) gains or gives access to, retains or uses any sample or DNA profile in contravention of the provisions of this Act.

52.—(1) A person shall not intentionally obstruct, hinder or resist a qualified person, a detention officer or any other person authorized to exercise functions under this Act.

Offences of obstructing qualified person, etc.

(2) A person who contravenes subsection (1) commits an offence.

Offences
relating to
information.

53. A person commits an offence if he—

- (a) knowingly submits false information to the Custodian, a qualified person, or a detention officer, in the exercise of his functions under this Act;
- (b) provides false information purporting to be from the National DNA Register;
- (c) falsifies or in any way modifies any information in the National DNA Register;
- (d) gains or attempts to gain access to information stored on the National DNA Register otherwise than in accordance with the provisions of this Act;
- (e) wilfully omits or fails to record a DNA profile in the National DNA Register otherwise than in accordance with the provisions of this Act; or
- (f) except in accordance with the provisions of this Act, communicates any information that is contained in the National DNA Register or allows the information to be communicated.

Offences
relating to
removal and
destruction of
samples and
DNA profiles.

54. A person commits an offence if, having been duly notified in writing that a sample or DNA profile is to be removed from the National DNA Register or destroyed in accordance with this Act, the person causes, whether intentionally or recklessly, any identifying information about a person obtained from a sample taken from the person under this Act or any DNA sample generated from that profile to be recorded or retained in the National DNA Register at any time after this Act requires the sample to be destroyed.

Offences
relating to
tampering,
etc., with
package
containing
sample or
DNA profile.

55. A person commits an offence if he wilfully—

- (a) opens, or causes to be opened, any package containing a sample or DNA profile in contravention of this Act;
- (b) tampers with the container or package containing a sample or DNA profile.

56. A person who fails to keep any books, documents or records required to be kept under this Act or any regulations made under this Act commits an offence. Offence of failure to keep records.

57. Every person who commits an offence under this Act or any regulations made under this Act in respect of which no special penalty is provided, shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months. Breach of offence for which no penalty is provided.

58. The offences specified in the first column of the First Schedule shall incur the penalties specified in relation thereto in the second column of that Schedule. Penalties. First Schedule.

59. Where an offence under this Act or any regulations made under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any willful default on the part of any director, manager, secretary or other officer of the body corporate, the director, manager, secretary or other officer of the body corporate as well as the body corporate shall be liable to be proceeded against and punished accordingly. Offence by body corporate.

PART XII—*Quality Management System*

60.—(1) The Custodian shall develop recommended standards for quality assurance, including— Development of quality management system.

- (a) standards for testing the proficiency of forensic science laboratories and forensic analysts in conducting analysis of DNA;
- (b) criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic science laboratories;
- (c) a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably;

(d) confidentiality requirements specified by the Custodian.

(2) Any privately operated forensic science laboratory that performs any DNA analysis, for the purposes of this Act, under a contract with the Government, shall comply with the quality assurance standards developed in accordance with subsection (1).

PART XIII—General

Power to take
sample from
clothing or
other
belongings,
etc.

61. A sample from which a DNA profile may be generated may be taken under this section from the clothing or other belongings of the person or from things reasonably believed to belong to, or to have been used by, the person or with which the person is reasonably believed to have been in contact.

DNA warrant.

62.—(1) A Justice of the Peace may issue a warrant under this section, if satisfied by information on oath that there are reasonable grounds to suspect that there may be in any place any DNA material that—

- (a) may be relevant as evidence in proving a relevant offence; or
- (b) has been acquired by a person for, or in, the commission of an offence or as a result of the commission of a relevant offence.

(2) A warrant under subsection (1) shall authorize a constable, with such assistance as may be necessary, to enter the place specified in the warrant to search for and seize the DNA material.

(3) In subsection (2), the reference to a “constable” means a detention officer.

Immunity.

63.—(1) Subject to subsection (2), no proceedings shall be brought against a person in respect of the taking of a sample or the generation of a DNA profile if that person has taken the sample or generated the DNA profile in accordance with this Act.

(2) This section shall not apply to any proceedings brought on the grounds of the use of unreasonable force in the taking of a sample.

64. A person shall not be liable for anything done or omitted to be done in good faith in the exercise or intended exercise of his functions under this Act. Protection from liability.

65.—(1) In any proceedings for a criminal offence, a certificate— Evidentiary certificates.

- (a) purporting to be signed by an authorizing officer and to certify—
 - (i) that a forensic procedure was carried out on a person specified in the certificate on a date and at a time and place specified in the certificate and that the procedure was carried out in compliance with the provisions of this Act relating to the conduct of forensic procedures; or
 - (ii) that forensic material obtained by carrying out a specified forensic procedure was dealt with in a manner specified in the certificate;
- (b) purporting to be signed by the Custodian and to certify that functions specified in the certificate were exercised; or
- (c) purporting to be signed by a forensic analyst and to certify that specified forensic material was dealt with in a manner specified in the certificate,

is, in the absence of evidence to the contrary, proof of the matters so certified.

66.—(1) The Minister may, after consultation with the Custodian, make regulations generally for giving effect to the purposes and provisions of this Act, and in particular but without prejudice to the generality of the foregoing, may make regulations providing for— Regulations.

- (a) the standards, recommended practices and quality assurance requirements that laboratories performing forensic DNA analysis, or utilizing the Combined DNA Index System, shall follow to ensure the quality and integrity of the data generated by the laboratories;

- (b) the identification and collection of DNA evidence from crime scenes;
- (c) the taking, collection, packaging, transportation, labelling, storage, analysis and preservation and disposal of samples and DNA profiles;
- (d) specifying the respective functions of testers and other laboratory personnel;
- (e) providing for DNA analysis and the circumstances in which DNA analysis may be made;
- (f) the conduct of searches of the National DNA Register;
- (g) the communication or request for DNA profiles and information;
- (h) operation of the investigative repository for DNA profiles;
- (i) access to the National DNA Register;
- (j) the manner in which the information provided under this Act may be used;
- (k) fees and other charges payable in respect of any service provided under this Act;
- (l) the keeping of statistics under this Act; and
- (m) procedure for the removal or modification of registrable particulars.

(2) Notwithstanding section 29 of the *Interpretation Act*, regulations made under subsection (1) may provide in respect of a breach of any of the provisions thereof that the offender shall, be liable on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or, in default of payment of the fine, of imprisonment for a term not exceeding one year, or of both such fine and imprisonment.

67. The provisions of the Second Schedule shall have effect in relation to the taking of samples and the generation of DNA profiles under this Act.

Rules for
taking samples
and generating
DNA profiles.
Second
Schedule.

68.—(1) The Custodian may prepare and submit to the Minister a draft code of practice, or draft codes of practice, for the purpose of providing practical guidance on the procedures regarding the taking of samples under this Act.

Codes of
practice.

(2) Upon receipt of a draft code of practice prepared under subsection (1), the Minister shall consult in relation to the parts of the code as relates to their respective functions with—

- (a) the Commissioner of Police;
- (b) the Commissioner of Corrections;
- (c) the Chief of Defence Staff of the Jamaica Defence Force;
- (d) the Commissioner of the Independent Commission of Investigations; and
- (e) such other person as the Minister thinks fit.

(3) The Minister may approve, or approve subject to modifications, a code of practice submitted to the Minister under subsection (1) and, when a code of practice has been so approved, it shall apply and have effect in accordance with its terms.

(4) A code of practice approved under this section, subject to subsection (7) may be amended or revoked by the Custodian.

(5) Amendments to a code of practice approved under this section, other than amendments of a minor or technical nature, shall be submitted to the Minister for approval.

(6) If it is proposed to revoke a code of practice approved under this section, the proposed revocation shall be submitted to the Minister for approval.

(7) The Minister may approve, or approve subject to modifications, an amended code of practice submitted to the Minister under subsection (5) and, when the code of practice has been so approved, it shall apply and have effect in accordance with its terms.

(8) The Minister may approve the revocation of a code of practice.

(9) A code of practice, or an amended code of practice, approved by the Minister under this section shall be made available publicly, whether electronically or otherwise, by the Minister or other person who prepared it.

Minister may
amend
Second
Schedule.
Second
Schedule.

69.—(1) The Minister may, by order published in the *Gazette*, amend the Second Schedule.

(2) Every order made under subsection (1) shall be subject to affirmative resolution.

Minister may
amend
monetary
penalties.

70. The Minister may by order, subject to affirmative resolution, amend any monetary penalty imposed under this Act.

PART XIV—*Transitional Provisions*

Validity of
samples and
profiles, etc.,
taken before
commence-
ment date.

71. Samples taken, DNA profiles generated from samples, registrable particulars and other information obtained from or in relation to the samples and the DNA profiles, before the commencement date—

- (a) are deemed to have been duly and validly taken, generated and obtained, as the case may be, under and in accordance with this Act;
- (b) may be retained and included in the National DNA Register; and
- (c) otherwise used in accordance with the provisions of this Act.

FIRST SCHEDULE

(Section 58)

Offences and Penalties

First Column		Second Column
Brief Description of Offences	Relevant Section	Penalty
Knowingly taking sample or generating DNA profile in contravention of the Act.	51(a)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.
Swapping sample or DNA profile with intent to deceive.	51(b)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprison- ment for a term not exceeding three years or to both such fine and imprisonment.
Wilfully mislabelling or mismatching a sample or a DNA profile.	51(c)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprison- ment for a term not exceeding three years or to both such fine and imprisonment.
Deliberately exposing samples to the risk of contamination or destruction.	51(d)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Offences and Penalties

First Column	Second Column
Brief Description of Offences	Relevant Section
Penalty	
Conducting any unauthorized research on any samples taken under this Act.	51(e)
Falsifying any profile.	51(f)
Knowingly impersonating any person for the purpose of providing a sample.	51(g)
Except in accordance with the provisions of this Act, disclosing or obtaining DNA profiles or obtaining sample from the National DNA Register.	51(h)
Gaining or giving access to, retaining or using any	51(i)

On summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding three months.

On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

On summary conviction in a Resident Magistrate's Court

Offences and Penalties

First Column		Second Column
Brief Description of Offences	Relevant Section	Penalty
sample or DNA profile in contravention of the Act.		to a fine not exceeding three million dollars or imprison- ment for a term not exceeding three years or to both such fine and imprisonment.
Intentionally obstructing, hindering or resisting a qualified person, <i>etc.</i>	52(1)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.
Wilfully submitting false information to the Custodian, <i>etc.</i>	53(a)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprison- ment for a term not exceeding three years or to both such fine and imprisonment.
Providing false information purporting to be from the National DNA Register.	53(b)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprison- ment for a term not exceeding three years or to both such fine and imprisonment.
Falsifying or in any way modifies any information in the National DNA Register.	53(c)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprison- ment for a term not exceeding three years or to both such fine and imprisonment.

Offences and Penalties

First Column Brief Description of Offences	Relevant Section	Second Column Penalty
Gaining or attempting to gain access to information stored on the National DNA Register otherwise than in accordance with this Act.	53(d)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Wilfully omitting or failing to record a DNA profile in the National DNA Register otherwise than in accordance with this Act.	53(e)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Communicating any information that is contained in the National DNA Register or allowing the information to be communicated otherwise than in accordance with this Act.	53(f)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Causing any identifying information obtained from sample of DNA profile to be recorded or retained in the National DNA Register after this Act requires it to be destroyed.	54	On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.
Wilfully— (a) opening, or causing to be	55	On summary conviction in a Resident Magistrate's Court to a fine not exceeding one

Offences and Penalties

First Column	Second Column
Brief Description of Offences	Relevant Section Penalty
opened, any package containing a sample or DNA profile in breach of this Act; or (b) tampering with a container or package containing samples or DNA profiles.	million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.
Failure to keep records.	56 On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months.

SECOND SCHEDULE (Sections 67 and 69)

Supplementary Provisions Relating to Samples and DNA Profiles

Privacy for
taking
samples.

1.—(1) Samples shall not be taken in the presence or view of a person whose presence is not necessary for the taking of the sample or required or permitted under another provision of this Act.

(2) The taking of samples shall not involve the removal of more clothing than is necessary for taking the samples.

Samples to be
taken in
professional
manner.

2. Samples shall be taken in a manner that is consistent with appropriate medical or other relevant professional standards.

Taking
samples of
hair.

3. Where a sample of hair other than pubic hair is taken from a person under this Act the sample may be taken by plucking hairs with their roots and, in so far as it is reasonably practicable, the hairs shall be plucked singly.

MEMORANDUM OF OBJECTS AND REASONS

The Government of Jamaica has embarked upon a programme to utilize DNA technology in the criminal investigation and identification processes in Jamaica. This is in keeping with the worldwide trend for the increased use of DNA technology in the investigation of crimes and the more modern techniques of criminal investigation that have evolved from that technology.

The utilization of DNA evidence has been shown to be conclusive in resolving a number of difficult cases, resulting in the successful conviction of serious offenders and, some instances, in the exoneration of persons wrongly accused or convicted of crimes and in identifying criminals many years after the commission of an offence. DNA evidence is valued particularly for the high degree of accuracy in criminal identification because of the unique nature of each person's genetic profile and the longevity of biological material. Therefore, DNA material provides highly probative evidence. In addition, the use of DNA evidence simplifies the administration of justice, saves time and money and facilitates the early detection, arrest and conviction of offenders.

Consequently, this Bill seeks to introduce a legislative framework for the regulation of the taking of DNA material for forensic investigation and human identification.

This Bill seeks, among other things, to—

- (a) provide for the keeping, maintenance and operation of a National DNA Register;
- (b) specify the offences in relation to which DNA material may be taken;
- (c) designate the Director of the Forensic Institute as the Custodian and specify the functions of the Custodian;
- (d) make provision for the taking of intimate samples and non-intimate samples;
- (e) set out the framework for the collection and retention of DNA material;
- (f) outline the basis on which DNA material may be destroyed.

PETER BUNTING
Minister of National Security