



Criminal Investigations (Bodily Samples) Amendment Regulations 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 2nd day of August 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 80 of the Criminal Investigations (Bodily Samples) Act 1995, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Criminal Investigations (Bodily Samples) Amendment Regulations 2010.

2 Commencement

These regulations come into force on 6 September 2010.

3 Principal regulations amended

These regulations amend the Criminal Investigations (Bodily Samples) Regulations 2004.

4 Schedule amended

The Schedule is amended by—

- (a) inserting the new forms 5A and 5B set out in the Schedule of these regulations after form 5;
 - (b) adding the form 14 set out in the Schedule of these regulations.
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Schedule

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New forms

Form 5A

Notice requiring person of or over 14 years but under 17 years to give bodily sample (on ground that he or she has been arrested for, or Police intend to charge him or her with, relevant offence)

Sections 24M and 24N, Criminal Investigations (Bodily Samples) Act 1995

Read this notice carefully—it contains important information you should know. If there is anything you do not understand about this notice, talk to your lawyer.

To *[full name of person to whom this notice relates]*

You are required to give a bodily sample under section 24K of the Criminal Investigations (Bodily Samples) Act 1995 because—

Select whichever of the following grounds applies.

- you have been arrested for *[specify relevant offence]*, which is a relevant offence (as defined in section 2(1) of that Act) and triggers the authority to take the bodily sample.
- the Police intend to charge you with the offence of *[specify relevant offence]*, which is a relevant offence (as defined in section 2(1) of that Act) and triggers the authority to take the bodily sample.

This notice is issued by *[officer requiring sample to be taken]*, who is stationed at *[officer's station]*.

Can I seek legal advice about this notice?

Yes, you or your parent may wish to consult a lawyer if there is anything you do not understand about this notice.

For the purposes of this notice, **parent**—

- (a) means a parent or guardian:
- (b) includes a step-parent (if the step-parent shares responsibility for day-to-day care with one of your parents):

Form 5A—*continued*

- (c) includes, if no parent or guardian can be found with reasonable diligence, a person in New Zealand who is acting in the place of a parent.

How will the bodily sample be taken?

You may choose to have a bodily sample taken by either of the following methods:

- a buccal sample (mouth swab); or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours.

However, if you do not choose a particular method and you do not have a preference as to which method is used, the Police may choose a method for taking of the bodily sample.

[Section 48A, Criminal Investigations (Bodily Samples) Act 1995.]

Who will take the bodily sample?

This depends on the method you choose for taking the sample.

Buccal sample (mouth swab)

You may choose one of the following:

- you may take the mouth swab yourself, under the supervision of a constable; or
- you may have the mouth swab taken by a suitably qualified person; or
- you may have the mouth swab taken by an independent adult under the supervision of a constable.

Blood sample from fingerprick

If you choose to give a blood sample from a fingerprick, it must be taken by a suitably qualified person.

[Sections 49 and 49A, Criminal Investigations (Bodily Samples) Act 1995.]

Form 5A—*continued***Can I be forced to give a bodily sample?**

Yes, if you refuse to give a bodily sample as required by this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If force is used, the sample will be taken by a blood sample from a fingerprick.

[Section 54A, Criminal Investigations (Bodily Samples) Act 1995.]

Can I have someone with me when I give my sample?

Yes, because you are under 17 years of age, you must have another person with you when the sample is taken. You may have the following people with you:

- a lawyer or another person of your choice; and
- a parent or another person who is your caregiver.

(Full notification is given, and the people you choose can be recorded, at the end of this notice.)

[Section 50A, Criminal Investigations (Bodily Samples) Act 1995.]

How is the bodily sample dealt with once it is taken?

This depends on the sample method you choose.

Buccal sample (mouth swab)

The constable who supervises you while you take the mouth swab or the suitably qualified person who takes the mouth swab will—

- (a) press the foam swab onto the sample card; and
- (b) seal the sample card into the paper envelope; and
- (c) seal the used foam swab into the self-seal plastic bag; and
- (d) seal both the swab and the sample card in the security seal bag.

Blood sample from fingerprick

The suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

Form 5A—*continued***What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample will be analysed to obtain a DNA profile if you are charged with the triggering offence referred to at the beginning of this notice or a related relevant offence. During the period between your being charged and the disposal of the charges, the profile will be held on a temporary DNA profile databank maintained by or on behalf of the Police.

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile and (unless a court authorises it to be kept) destroyed as soon as practicable after a DNA profile is obtained; and
- the DNA profile will be stored on a temporary DNA profile databank maintained by or on behalf of the Police; and
- the DNA profile will be compared with unidentified DNA information obtained from scenes of crime.

A DNA profile derived from a bodily sample taken from you under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 is not admissible against you in any criminal proceedings. However, a District Court Judge or Youth Court Judge may authorise a bodily sample taken under Part 2B of that Act to be retained and used as an evidential sample in criminal proceedings. The Police may only make this application in the following circumstances:

- if the sample has not yet been analysed; and
- if the Police believe the sample taken would tend to confirm or disprove your involvement in the commission of the offence that is the subject of the criminal proceedings.

If you are convicted of the offence referred to at the beginning of this notice or a related offence, your profile and details that link you to that sample will be transferred to the permanent DNA databank.

[Sections 24P, 26, 60A, and 71A, Criminal Investigations (Bodily Samples) Act 1995.]

Can I have a sample for my own analysis?

Yes, you may request a second sample but you need to make your own arrangements to get your sample analysed. The process for tak-

Form 5A—*continued*

ing your sample again depends on the type of sample you choose to give for your own analysis and is the same as described earlier.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

What information will be kept on the DNA profile databank?

Information will be held relating to the sample, the profile, and details identifying you as the donor.

A DNA profile derived under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 may be stored on a DNA profile databank (kept under section 25 of that Act) if—

- you are convicted of a relevant offence (either the triggering offence or a related offence) and given a sentence of imprisonment or a non-custodial sentence, or an order is made against you under section 283 of the Children, Young Persons, and Their Families Act 1989; or
- the charge relates to a relevant offence or a related offence, and is discharged under section 282 of that Act even though the offence was proved.

[Section 26(ab) and (ac), Criminal Investigations (Bodily Samples) Act 1995.]

Are there any controls on the use of the information on a DNA profile databank?

Yes, there are controls. No one may have access to or may disclose information stored on a DNA databank except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile in the course of a criminal investigation:
- making your information available to you in accordance with the Privacy Act 1993:
- administering the DNA profile databank.

[Section 27, Criminal Investigations (Bodily Samples) Act 1995.]

Form 5A—*continued***Are there any circumstances when the bodily samples and the information are destroyed?**

Your bodily sample must be destroyed as soon as practicable after a DNA profile is obtained from the sample.

Records about your bodily sample must be destroyed—

- as soon as practicable after the end of 2 months beginning on the date on which your bodily sample was taken, if you are not charged with the offence referred to at the beginning of this notice or a related relevant offence before that 2-month period ends; or
- as soon as practicable after the charge is withdrawn or you are acquitted of the offence, if that happens.

If you are convicted of a relevant offence, your DNA profile will be kept on the DNA profile databank for a period of time depending on the outcome of the proceedings against you in either the Youth Court or District Court. The following table sets out the retention periods for DNA profiles following certain court sentences or orders, including those for subsequent offences (**CYPA** refers to the Children, Young Persons, and Their Families Act 1989):

Sentence or order	Retention period(s)
Section 282 CYPA order made	4 years; a second section 282 CYPA order during that initial 4 years carries a separate 4-year retention period that runs concurrently with the first period; a subsequent section 283 CYPA order carries a 10-year retention period that also runs concurrently with the first period; a subsequent conviction without imprisonment carries a 10-year period that also runs concurrently with the first period
Section 283(a) to (n) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Section 283(o) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Convicted by District Court but not sentenced to imprisonment	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period

Form 5A—*continued*

Sentence or order	Retention period(s)
Sentenced to imprisonment by a court	indefinite
Others (eg, a section 283 CYPA order is made and during the 10-year retention period another section 283 CYPA order is made against you)	indefinite

[Sections 26A and 60A, Criminal Investigations (Bodily Samples) Act 1995.]

Notification of right to have person present during taking of bodily sample

Because you are under 17 years of age, you must have another person with you when the sample is taken. You can have the following people present:

- a lawyer or another person of your choice; and
- a parent or another person who is your caregiver.

Unless you object, your parent or caregiver may choose a lawyer or another person to be present during the taking of the sample.

If you wish to have someone present and you wish the Police to notify that person, the Police will take all reasonable steps to do so. Please note that it is the responsibility of the person requested to be present to take steps to attend when the bodily sample is taken. The Police have no responsibility for arranging transportation or accommodation or for paying costs associated with that person's attendance.

Select one of the following:

- I do not require Police to notify any person concerning my DNA sample.
- I wish Police to notify the following persons of the time, date, and place where the sample is to be taken.

Form 5A—*continued*

Requested person details (to have present during the taking of the bodily sample)

First name	Last name	Address	Phone (home)	Phone (work)
[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]

I understand the information explained in this notice: Yes/No

Date:

Signature of suspect:

Date:

Signature of parent:

Attention officer in charge

Upon signing, the original should be placed on the DNA file and copies given to the donor and parent/caregiver.

Form 5B

Notice requiring person of or over 17 years to give bodily sample (on ground that he or she has been arrested for, or Police intend to charge him or her with, relevant offence)

Sections 24M and 24N, Criminal Investigations (Bodily Samples) Act 1995

Read this notice carefully—it contains important information you should know. If there is anything you do not understand about this notice, talk to your lawyer.

To *[full name of person to whom this notice relates]*

You are required to give a bodily sample under section 24J of the Criminal Investigations (Bodily Samples) Act 1995 because—

Select whichever of the following grounds applies.

- you have been detained for *[specify relevant offence]*, which is a relevant offence (as defined in section 2(1) of that Act) and triggers the authority to take the bodily sample.
- the Police intend to charge you with the offence of *[specify relevant offence]*, which is a relevant offence (as defined in section 2(1) of that Act) and triggers the authority to take the bodily sample.

This notice is issued by *[officer requiring sample to be taken]*, who is stationed at *[officer's station]*.

Can I seek legal advice about this notice?

Yes, you may wish to consult a lawyer if there is anything you do not understand about this notice.

How will the bodily sample be taken?

You may choose to have a bodily sample taken by either of the following methods:

- a buccal sample (mouth swab); or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

Form 5B—*continued*

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours.

However, if you do not choose a particular method and you do not have a preference as to which method is used, the Police may choose a method for taking the bodily sample.

[Section 48A, Criminal Investigations (Bodily Samples) Act 1995.]

Who will take the bodily sample?

This depends on the method you choose for taking the sample.

Buccal sample (mouth swab)

You may choose one of the following:

- you may take the mouth swab yourself, under the supervision of a constable; or
- you may have the mouth swab taken by a suitably qualified person.

Blood sample from fingerprick

If you choose to give a blood sample from a fingerprick, it must be taken by a suitably qualified person.

[Sections 49 and 49A, Criminal Investigations (Bodily Samples) Act 1995.]

Can I be forced to give a bodily sample?

Yes, if you refuse to give a bodily sample as required by this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If force is used, the sample will be taken by a blood sample from a fingerprick.

[Section 54A, Criminal Investigations (Bodily Samples) Act 1995.]

Can I have someone with me when I give my sample?

Yes, you may have a lawyer or another person of your choice with you when the sample is taken.

(Full notification is given, and the people you choose can be recorded, at the end of this notice.)

Form 5B—*continued*

[Section 50, Criminal Investigations (Bodily Samples) Act 1995.]

How is the bodily sample dealt with once it is taken?

This depends on the sample method you choose.

Buccal sample (mouth swab)

The constable who supervises you while you take the mouth swab or the suitably qualified person who takes the mouth swab will—

- (a) press the foam swab onto the sample card; and
- (b) seal the sample card into the paper envelope; and
- (c) seal the used foam swab into the self-seal plastic bag; and
- (d) seal both the swab and the sample card in the security seal bag.

Blood sample from fingerprick

The suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

What will the Police do with the bodily sample and the analysis of it?

Your bodily sample will be analysed to obtain a DNA profile if you are charged with the triggering offence referred to at the beginning of this notice or a related relevant offence. During the period between your being charged and the disposal of the charges, the profile will be held on a temporary DNA profile databank maintained by or on behalf of the Police.

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile and (unless a court authorises it to be kept) destroyed as soon as practicable after a DNA profile is obtained; and
- the DNA profile will be stored on a temporary DNA profile databank maintained by or on behalf of the Police; and

Form 5B—*continued*

- the DNA profile will be compared with unidentified DNA information obtained from scenes of crime.

A DNA profile derived from a bodily sample taken from you under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 is not admissible against you in any criminal proceedings. However, a District Court Judge or Youth Court Judge may authorise a bodily sample taken under Part 2B of that Act to be retained and used as an evidential sample in criminal proceedings. The Police may only make this application in the following circumstances:

- if the sample has not yet been analysed; and
- if the Police believe the sample taken would tend to confirm or disprove your involvement in the commission of the offence that is the subject of the criminal proceedings.

If you are convicted of the offence referred to at the beginning of this notice or a related offence, your profile and details that link you to that sample will be transferred to the permanent DNA databank.

[Sections 24P, 26, 60A, and 71A, Criminal Investigations (Bodily Samples) Act 1995.]

Can I have a sample for my own analysis?

Yes, you may request a second sample but you need to make your own arrangements to get your sample analysed. The process for taking your sample again depends on the type of sample you choose to give for your own analysis and is the same as described earlier.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

What information will be kept on the DNA profile databank?

Information will be held relating to the sample, the profile, and details identifying you as the donor.

A DNA profile derived under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 may be stored on a DNA profile databank (kept under section 25 of that Act) if you are convicted of a relevant offence (either the triggering offence or a related offence). If you were under the age of 17 years on the date of the offence, the profile cannot be stored there unless a sentence of imprisonment or a non-

Form 5B—*continued*

custodial sentence has been imposed or an order made under section 283 of the Children, Young Persons, and Their Families Act 1989. [Section 26(ab) and (ac), Criminal Investigations (Bodily Samples) Act 1995.]

Are there any controls on the use of the information on a DNA profile databank?

Yes, there are controls. No one may have access to or may disclose information stored on a DNA databank except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile in the course of a criminal investigation:
- making your information available to you in accordance with the Privacy Act 1993:
- administering the DNA profile databank.

[Section 27, Criminal Investigations (Bodily Samples) Act 1995.]

Are there any circumstances when the bodily samples and the information are destroyed?

Your bodily sample must be destroyed as soon as practicable after a DNA profile is obtained from the sample.

Records about your bodily sample must be destroyed—

- as soon as practicable after the end of 2 months beginning on the date on which your bodily sample was taken, if you are not charged with the offence referred to at the beginning of this notice or a related relevant offence before that 2-month period ends; or
- as soon as practicable after the charge is withdrawn or you are acquitted of the offence, if that happens.

If you are convicted of a relevant offence, your DNA profile will be kept on the DNA profile databank for a period of time depending on the outcome of the proceedings against you in either the Youth Court or District Court. The following table sets out the retention periods for DNA profiles following certain court sentences or orders, including those for subsequent offences (**CYPA** refers to the Chil-

Form 5B—*continued*

dren, Young Persons, and Their Families Act 1989—disregard the CYPA entries if they do not apply to you):

Sentence or order	Retention period(s)
Section 282 CYPA order made	4 years; a second section 282 CYPA order during that initial 4 years carries a separate 4-year retention period that runs concurrently with the first period; a subsequent section 283 CYPA order carries a 10-year retention period that also runs concurrently with the first period; a subsequent conviction without imprisonment carries a 10-year period that also runs concurrently with the first period
Section 283(a) to (n) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Section 283(o) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Convicted by District Court but not sentenced to imprisonment	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Sentenced to imprisonment by a court	indefinite
Others (eg, a section 283 CYPA order is made and during the 10-year retention period another section 283 CYPA order is made against you)	indefinite

[Sections 26A and 60A, Criminal Investigations (Bodily Samples) Act 1995.]

Notification of right to have person present during taking of bodily sample

You may have a lawyer or another person of your choice with you when the sample is taken.

If you wish to have someone present and you wish the Police to notify that person, the Police will take all reasonable steps to do so. Please note that it is the responsibility of the person requested to be present to take steps to attend when the bodily sample is taken. The Police

Form 5B—*continued*

have no responsibility for arranging transportation or accommodation or for paying costs associated with that person's attendance.

Select one of the following:

- I do not require Police to notify any person concerning my DNA sample.
- I wish Police to notify the following persons of the time, date, and place where the sample is to be taken.

Requested person details (to have present during the taking of the bodily sample)

First name	Last name	Address	Phone (home)	Phone (work)
[specify]	[specify]	[specify]	[specify]	[specify]

I understand the information explained in this notice: Yes/No

Date:

Signature of suspect:

Attention officer in charge

Upon signing, the original should be placed on the DNA file and copies given to the donor.

Form 14
Warrant to arrest and detain young person until
bodily sample taken
*Section 50C, Criminal Investigations (Bodily Samples) Act
1995*

No:

To every constable

A notice given under section 50B(2) or (6) of the Criminal Investigations (Bodily Samples) Act 1995 by a constable required [*full name, address, and occupation of person to be arrested and detained*] to attend [*place, time, date*] to give a bodily sample.

This warrant is issued on the basis that the Judge is satisfied by evidence given on oath that [*full name*] failed to attend as specified in the notice to give a bodily sample.

This warrant authorises you—

- to arrest [*full name*]; and
- to detain him/her* for as long as is reasonably necessary to take a bodily sample from him/her*, but in no case longer than 24 hours.

*Select one.

This warrant expires immediately after a bodily sample is taken from [*full name*].

The power to arrest and detain under this warrant may be exercised on 1 occasion only.

Note: The bodily sample need not be taken at the place, on the date, or at the place and on the date specified in the section 50B notice).

Dated at [*place/date*].

Signature:

*Registrar/Deputy Registrar

*Select one.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 6 September 2010, amend the Criminal Investigations (Bodily Samples) Regulations 2004 by adding the following new forms:

- *new form 5A*: notice requiring a young person to give a bodily sample on the ground that the Police have arrested or intend to charge him or her with a relevant offence:
- *new form 5B*: notice requiring a person of or over 17 years of age to give a bodily sample on the ground that the Police have arrested or intend to charge him or her with a relevant offence:
- *new form 14*: warrant to arrest and detain a young person for the purposes of taking a bodily sample.

The new forms are prescribed for the purposes of Part 2B of the Criminal Investigations (Bodily Samples) Act 1995. Part 2B comes into force on 6 September 2010 and authorises the taking of a bodily sample from a person if he or she is in custody for a relevant offence or if the Police intend to charge him or her with a relevant offence. A profile derived from the sample will be stored on the Part 2B temporary databank for a period specified in section 26A of the Act. Retention periods will vary depending on the nature of the offence and whether the person reoffends during a retention period.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 5 August 2010.
These regulations are administered by the Ministry of Justice.
