

## CRIMINAL INVESTIGATIONS (BLOOD SAMPLES) BILL

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### EXPLANATORY NOTE

THIS Bill makes provision for the Police to obtain blood samples and use the results of the analysis of those samples in the investigation and prosecution of criminal offences. The Bill aims to address a number matters arising out of recent developments in the field of genetic fingerprinting, and judicial concerns about the absence of legislative guidelines relating to the use of such techniques by the Police in criminal investigations (see, for example, *R v Montella* [1992] 1 NZLR 63).

#### *General Commentary*

The Bill has 2 principal purposes.

First, the Bill provides for the Police to obtain a blood sample from a person who is suspected of having committed a certain type of offence and to use that sample for the purpose of confirming or disproving that person's involvement in the commission of the offence. If the Police wish to obtain a blood sample from a person for this purpose, they must first request the person to consent to the taking of the sample. A request may be made only in respect of an indictable offence, and the suspect is free to consent or refuse consent. The consent of a person who is aged 17 or over is sufficient to authorise a blood sample to be taken, but in the case of a person who is over 14 and under 17, both that person's consent and the consent of a parent or guardian of that person is required. No request may be made to a person who is under the age of 14.

The Bill provides a number of safeguards relating to this procedure, including the following:

- (a) The Police officer requesting a blood sample must give the suspect both oral and written information about the request, including the purpose of the request, the fact that the suspect is not obliged to consent to the taking of the sample, how any blood sample obtained will be dealt with and how it may be used, and the possible consequences of refusing to consent:
- (b) The Police officer must inform the suspect that he or she may wish to consult a lawyer before deciding whether or not to consent to the taking of the blood sample:
- (c) The consent to the taking of a blood sample must be in writing signed by the suspect, or recorded on videotape:
- (d) Any consent may be withdrawn at any time, either orally or in writing:

- (e) A suspect who is in custody is entitled to consult privately with a lawyer with respect to the request:
- (f) Where a request is made to a suspect who is under 17, the oral and written information given to him or her must include additional details, including information relating to the requirement for a parent or guardian to consent to the taking of a blood sample, and a copy of the written notice given to the suspect must be given to a parent or guardian of the suspect.

If a request is made to a suspect, and consent to the taking of a blood sample is refused, the Bill authorises the Police to make an application to a High Court Judge for an order requiring the suspect to provide a blood sample. The following provisions apply in respect of such an application:

- (a) There must be good cause to suspect that the person from whom a blood sample is sought has committed one of the indictable offences specified in the Schedule to the Bill (referred to in the Bill as a relevant offence). Those offences include sexual violation, murder, manslaughter, infecting with disease, and robbery:
- (b) The application may be made only by a commissioned officer of the Police:
- (c) The suspect must be served with a copy of the application, and is entitled to appear and adduce evidence at the hearing:
- (d) The name of the suspect and any particulars identifying him or her may not be published without the permission of a Judge or unless the suspect is charged with the offence in respect of which the application is made:
- (e) Provision is made for information or evidence the disclosure of which would be likely to identify any undercover Police officers involved in the investigation, or endanger the safety of any person, or substantially prejudice the investigation of the offence to which the application relates, to be withheld from the respondent:
- (f) A High Court Judge may order the suspect to provide a blood sample if the Judge is satisfied—
  - (i) That there is good cause to suspect that the suspect has committed the relevant offence to which the application relates; and
  - (ii) That genetic material reasonably believed to be from the person who committed the offence has been found at the scene of the offence or on the victim or in certain other circumstances; and
  - (iii) That an analysis of a blood sample from the suspect would tend to confirm or disprove the suspect's involvement in the commission of the offence; and
  - (iv) The suspect has been requested to provide a blood sample and has refused; and
  - (v) That, in all the circumstances, it is reasonable to make the order.

If a request for a blood sample is made to a suspect who is over 14 years but under 17 years, and consent to the taking of a sample is not obtained from both the suspect and a parent or guardian of the suspect, an application may be made to a High Court Judge for an order requiring that suspect to provide a sample. Such an application may also be made in relation to any suspect who is under 14, but in such a case there is no requirement than a request must first have been made to the suspect to provide a blood sample. The provisions of the Bill that apply in relation to an application made in relation to a suspect who is 17 or over in general apply in relation to an application in respect of a suspect who is under 17. Certain special provisions apply, including the following:

- (a) No application or order may be made unless the suspect may lawfully be prosecuted for the offence:

- (b) Notice of the application must also be served on a parent or guardian or person who has the care of the suspect, and on any lay advocate appointed under the Children, Young Persons, and Their Families Act 1989 in respect of the suspect, and those persons are entitled to appear and adduce evidence at the hearing;
- (c) The Judge may appoint a lawyer to represent the suspect if he or she is not already represented.

If a High Court Judge orders a suspect to provide a blood sample, and that person refuses to allow the sample to be taken, a member of the Police may use reasonable force to assist a medical practitioner to take the sample. However, if the person's refusal means that no sample is taken, then, in any criminal proceedings against that person for the offence in respect of which the sample was sought, or a related offence,—

- (a) The prosecution may adduce evidence as to that refusal, unless the prejudicial effect of the evidence would outweigh its probative value; and
- (b) The court or jury may draw such inferences from the fact of refusal as appear to be proper in the circumstances, but a Judge may tell a jury that there may be good reasons for the refusal.

The second purpose of the Bill is to authorise the maintenance, by or on behalf of the Police, of a database of DNA profiles for use in the investigation of offences, and to provide for the Police to obtain blood samples from which DNA profiles may be derived for storage on such a database. The principal features of this aspect of the Bill are as follows:

- (a) Strict limitations are imposed on access to and disclosure of information stored on a DNA databank. In general, such information may be accessed and disclosed only—
  - (i) For the purposes of comparing DNA profiles in the course of a criminal investigation by the Police;
  - (ii) For the purpose of making the information available, in accordance with the Privacy Act 1993, to the person to whom the information relates;
  - (iii) For the purpose of administering the DNA databank;
- (b) DNA profiles derived from blood samples obtained pursuant to the Bill from suspects may be stored on a DNA databank if the offence in respect of which the sample is obtained is a relevant offence (i.e., those crimes listed in the Schedule to the Bill) and the suspect is convicted of that offence;
- (b) Blood samples may be obtained specifically for the purposes of deriving DNA profiles for storage on a DNA databank in 2 ways, as follows:
  - (i) The Police may request any person who is aged 17 or over to give a blood sample. Similar provisions apply in relation to such a request as apply in relation to a request to a suspect to give a blood sample, except that a databank request is not related to a specific offence, and there need be no suspicion that the person requested has committed any offence. There is no obligation on a person to consent to the taking of the sample, and, with certain exceptions, a person may withdraw any consent to the use of the sample, in which case the sample and any related personal information must be destroyed;
  - (ii) Where any person (of whatever age) is convicted of a relevant offence, the Police may apply, at the time of sentencing or at any time within 6 months of conviction, for an order requiring the convicted person to provide a blood sample. Such an application may be made by a member of the Police who is of or above the rank of sergeant, and

the application is to be made to a Judge of the court in which the convicted person was, or is to be, sentenced. The Judge must make an order if he or she is satisfied that the person has been convicted of a relevant offence and the conviction has not subsequently been quashed. Special provisions apply in relation to applications made in relation to persons who are under the age of 17:

- (c) The Bill specifically provides that where a DNA profile derived from a blood sample is stored on a DNA databank, that profile is not admissible in evidence against that person in any criminal proceedings, except where the sample was taken from a suspect and the proceedings are for the offence in relation to which the sample was taken.

There are a number of features of the Bill that are common to the provisions relating to the obtaining of blood samples from suspects and those relating to the obtaining of blood samples for use in relation to a DNA databank. These features include the following:

- (a) Where a Judge has made an order requiring a person to provide a blood sample, a member of the Police may apply for a warrant to arrest that person and detain him or her (for up to 24 hours) until a blood sample is taken pursuant to the order:
- (b) Blood samples may be taken pursuant to the Bill in 2 ways—by taking the sample from a person's vein (a venous sample) or from a prick made to a person's finger or thumb (a fingerprick sample). In every case, the person who is to give the sample is to be given a choice as to how the sample is to be taken, and the sample must be taken in accordance with the person's choice. However, where a person is required by a judicial order to provide a sample, and that person refuses to do so, a member of the Police may use reasonable force to assist a medical practitioner to take a fingerprick sample:
- (c) Blood samples may be taken pursuant to the Bill only by a registered medical practitioner or, with the consent of the person from whom the sample is to be taken, a registered nurse:
- (d) A person from whom a blood sample is to be taken pursuant to the Bill is entitled to choose 3 persons (a medical practitioner, a lawyer, and 1 other person) to be present during the taking of the sample. A person who is under 17 is also entitled to the presence of a parent or guardian or other person who has the care of that person:
- (e) Restrictions are imposed on who may be present when a blood sample is taken pursuant to the Bill, and the sample is to be taken in circumstances affording reasonable privacy:
- (f) Provision is made for a person from whom a blood sample is taken to obtain part of the sample taken so that the person may have his or her own analysis done:
- (g) A person from whom a blood sample is taken is entitled to be given a copy of the results of any analysis of the sample:
- (h) Provision is made for the destruction of blood samples and associated identifying information in certain circumstances or after certain periods.

*Clause by Clause Commentary*

*Clause 1* relates to the Short Title and commencement. The Bill is to come into force on 1 July 1995.

## PART I

## PRELIMINARY PROVISIONS

*Clause 2* relates to interpretation. Of particular significance are the following definitions:

- (a) The definition of the term “conviction”, which is extended to include a finding by a Youth Court that a charge against a young person is proved;
- (b) The definition of the term “relevant offence”, which means an offence against any of the provisions of the Crimes Act 1961 listed in the Schedule to the Bill;
- (c) The definition of the term “suspect”, which means any person whom it is believed has or may have committed a particular offence, whether or not the person has been charged with the offence or there is good cause to suspect the person of having committed the offence.

*Clause 3* provides that the Bill binds the Crown.

*Clause 4* relates to the application of the Bill, and provides—

- (a) That it applies to the investigation of offences committed, or believed to have been committed, before or after the Bill’s commencement; and
- (b) That *Part III* of the Bill applies only to convictions entered after that commencement.

## PART II

## OBTAINING BLOOD SAMPLES FROM SUSPECTS

*Authority to Obtain Blood Sample from Suspects*

*Clause 5* sets out the circumstances in which the Police may obtain a blood sample from a suspect for use in a criminal investigation in respect of an offence. Subject to any other enactment authorising the taking of a blood sample, such a blood sample may be taken only if—

- (a) The offence is an indictable offence; and
- (b) The sample is taken with the consent of the suspect (and, in the case of a suspect who is aged 14 or over but under 17, of his or her parent or guardian) or under an order made pursuant to the Bill by a Judge; and
- (c) The sample is taken in accordance with the procedures set out in *Part IV* of the Bill.

*Obtaining Blood Sample By Consent*

*Clause 6* sets out the circumstances in which the Police may request a suspect to provide a blood sample for the purposes of a criminal investigation in respect of an indictable offence committed or believed to have been committed. Any Police officer may make such a request to a suspect if the officer has reasonable grounds to believe that analysis of the sample would tend to confirm or disprove the suspect’s involvement in the commission of the offence.

On making such a request, the Police officer must hand to the suspect a written notice in the prescribed form and containing the particulars set out in *clause 7*, and inform the suspect of certain matters, including the following:

- (a) The offence in respect of which the request is made;
- (b) That the suspect is not obliged to give a blood sample;
- (c) That the suspect may wish to consult a lawyer before deciding whether or not to consent to giving a sample;
- (d) That the sample will be analysed and may provide evidence that may be used against the suspect in criminal proceedings;
- (e) That where the offence is a relevant offence, there is good cause to suspect that the suspect committed the offence, and the suspect refuses to

provide a blood sample, the Police may apply for a court order requiring the suspect to provide a blood sample.

*Clause 7* sets out the particulars that must be included in the notice handed to a suspect at the time of the making of a request to provide a blood sample. In addition to including the matters in respect of which the Police officer must give oral information to the suspect, the notice must also include particulars relating to—

- (a) The procedures prescribed by the Bill in relation to the taking of a blood sample:
- (b) The persons whom the suspect may choose to be present when the sample is taken:
- (c) The procedures prescribed by the Bill in relation to the analysis of the sample and the disclosure of the results of that analysis:
- (d) The persons by whom the sample and any information derived from the sample will be held:
- (e) The circumstances in which information derived from the sample may be held on a DNA databank:
- (f) The circumstances in which the sample and information derived from any analysis of the sample must be destroyed.

*Clause 8* relates to the making of a request for a blood sample to a person who is under 17. In no circumstances may such a request be made to a person who is under 14, and such a person is incapable of consenting to the taking of a blood sample from him or her.

Where a request is made to a person who is 14 or over but under 17, special provisions apply, as follows:

- (a) A copy of the notice required to be handed to the suspect must be given to a parent or guardian of the suspect:
- (b) The suspect must be told that both the suspect and a parent or guardian of the suspect must consent before a sample can be taken, and that no parent or guardian is obliged to give such consent:
- (c) The notice handed to the suspect must include the 2 matters stated above, and must also inform the suspect that a parent or guardian may wish to consult a lawyer in relation to the request, and that the consent of a parent or guardian may be withdrawn at any time.

*Clause 9* provides that no consent to the taking of a blood sample in response to a request to a suspect is valid unless the consent is either in writing and signed by the person giving the consent, or is given orally and recorded on videotape. A written consent must be signified on the notice handed to the suspect, or on a copy of that notice. A videotaped consent given by a suspect must clearly show the making of the request, the handing to the suspect of the required notice, and the giving of consent. The requirements are similar in relation to a videotaped consent given by a parent or guardian of a suspect who is under 17.

*Clause 10* provides for the withdrawal of consent to the taking of a blood sample from a suspect. A withdrawal may be made orally or in writing, and on any such withdrawal the suspect is deemed to have refused to consent to the taking of the sample.

*Clause 11* provides that if a suspect (and, in the case of a suspect who is under 17, a parent or guardian of the suspect) do not consent to the taking of a blood sample within 48 hours of the making of a request, the suspect is deemed to have refused to consent to the taking of the sample. This means that if the offence to which the request relates is a relevant offence, the Police may, on the expiry of that 48 hour period, apply for a court order to obtain the sample.

*Clause 12* provides that a suspect who is requested to provide a blood sample and who is in custody is entitled to consult privately with a lawyer with respect to the request. This right is subject to any measures reasonably necessary to prevent the suspect from escaping, or to ensure the safety of any person, or to prevent the suspect from damaging any property.

*Obtaining Blood Sample By Court Order from Persons 17 and Over*

*Clause 13* empowers a commissioned officer of the Police to apply to a High Court Judge for an order (referred to in the Bill as a suspect compulsion order) requiring a suspect who is 17 or over to provide a blood sample. There must be good cause to suspect that the suspect has committed a relevant offence, and the suspect must have refused to provide a blood sample after having been requested to do so under *clause 6*.

The application must be served on the suspect, who is entitled to appear and adduce evidence at the hearing.

In considering an application, a Judge may take into account any relevant evidence, whether or not it would be admissible in a court of law.

*Clause 14* provides that where an application is made for a suspect compulsion order, the name of the suspect and any particulars identifying him or her may not be published without the permission of a Judge or unless the suspect is charged with the offence in respect of which the application is made.

*Clause 15* makes provision for withholding, from a person in relation to whom an application for a suspect compulsion order is made, certain information relating to the investigation of the offence to which the application relates. A Judge may make an order that information or evidence the disclosure of which would be likely to identify any undercover Police officers involved in the investigation, or endanger the safety of any person, or substantially prejudice the investigation of the offence to which the application relates, be withheld from the respondent.

*Clause 16* authorises a High Court Judge, on an application for a suspect compulsion order, to make an order requiring a suspect who is aged 17 or over to provide a blood sample. The Judge must be satisfied—

- (a) That there is good cause to suspect that the suspect has committed the relevant offence to which the application relates; and
- (b) That material reasonably believed to be from the body of the person who committed the offence has been found at the scene of the offence or on the victim or on anything worn or carried by the victim or on any person or thing reasonably believed to have been associated with the commission of the offence; and
- (c) That there are reasonable grounds to believe that an analysis of a blood sample from the suspect would tend to confirm or disprove the suspect's involvement in the commission of the offence; and
- (d) That the suspect has been requested to provide a blood sample and has refused; and
- (e) That, in all the circumstances, it is reasonable to make the order.

The Judge must have regard to certain specified matters in deciding whether or not to make the order.

*Clause 17* makes it clear that more than one application for a suspect compulsion order may be made and granted in relation to the same offence and the same suspect, but a Judge may refuse to make an order on a further application if he or she is satisfied that the application is vexatious or an abuse of the process of the court.

*Obtaining Blood Sample By Court Order from Persons Under 17*

*Clause 18* empowers a commissioned officer of the Police to apply to a High Court Judge for an order (referred to in the Bill as a juvenile compulsion order) requiring a suspect who is under the age of 17 to provide a blood sample. There must be good cause to suspect that the suspect has committed a relevant offence, the suspect must be able to be lawfully prosecuted for that offence, and, in the case of a suspect who is aged 14 or over, the Police must have been unable to obtain the consent of the suspect and a parent or guardian of the suspect after having made a request under *clause 6* for the suspect to provide a blood sample.

Notice of the application must be served on the suspect, a parent or guardian or other person having the care of the suspect, and on any lay advocate appointed under the Children, Young Persons, and Their Families Act 1989 in respect of the suspect, and those persons, as well as certain other persons, are entitled to appear and adduce evidence at the hearing.

In considering an application for a juvenile compulsion order, a Judge may take into account any relevant evidence, whether or not it would be admissible in a court of law.

*Clause 19* provides that where an application is made for a juvenile compulsion order, the name of the suspect and any particulars identifying him or her may not be published.

*Clause 20* provides that *clause 15* (which provides for the withholding of certain information or evidence from the suspect), and *clause 17* (which relates to further applications for a suspect compulsion order in relation to the same offence or the same suspect), are to apply in relation to an application under *clause 18* for a juvenile compulsion order.

*Clause 21* provides for the appointment of a lawyer to represent a person in respect of whom an application is made under *clause 18* for a juvenile compulsion order, if the person is not already represented. Where a lawyer has already been appointed under the Children, Young Persons, and Their Families Act 1989 as a youth advocate to represent the person, the court is to appoint that lawyer if possible.

*Clause 22* clarifies the rights, powers, privileges and immunities of a lawyer appointed pursuant to *clause 21*, and provides that the lawyer may, if the respondent agrees, be entitled to represent the respondent in certain other proceedings under the Bill.

*Clause 23* authorises a High Court Judge, on an application for a juvenile compulsion order, to make an order requiring the suspect to provide a blood sample. The Judge must be satisfied—

- (a) That there is good cause to suspect that the suspect has committed the relevant offence to which the application relates; and
- (b) That the suspect may lawfully be prosecuted for the offence; and
- (c) That material reasonably believed to be from the body of the person who committed the offence has been found at the scene of the offence or on the victim or on anything worn or carried by the victim or on any person or thing reasonably believed to have been associated with the commission of the offence; and
- (d) That there are reasonable grounds to believe that an analysis of a blood sample from the suspect would tend to confirm or disprove the suspect's involvement in the commission of the offence; and
- (e) That where the suspect is 14 or over, the suspect has been requested to provide a blood sample, and the Police have not been able to obtain



the consent of the suspect and a parent or guardian of the suspect to the taking of a sample; and

(f) That, in all the circumstances, it is reasonable to make the order.

The Judge must have regard to certain specified matters in deciding whether or not to make the order, including the nature and seriousness of the offence, and the age of the suspect.

*Form and Content of Compulsion Order*

*Clause 24* provides that every suspect compulsion order and every juvenile compulsion order must be in the prescribed form, provides for a Judge to impose conditions on such orders, and sets out certain particulars that must be set out in such orders.

PART III  
DNA DATABANK  
*DNA Databank*

*Clause 25* authorises the maintenance, by or on behalf of the Police, of a database of DNA profiles derived from blood samples taken pursuant to the Bill. A DNA profile is defined in *clause 2* as information derived from an analysis of a sample of genetic material obtained from a person, being information that clearly identifies that person, and that can be compared with information obtained from another sample of genetic material for the purpose of determining, with reasonable certainty, whether or not the 2 samples are from the same person.

*Clause 26* sets out the information that may be stored on a DNA databank. This is—

- (a) Any DNA profile derived from a blood sample obtained from a suspect pursuant to *Part II* of the Bill, if the offence in respect of which the sample was obtained is a relevant offence, and the suspect has been convicted of the offence;
- (b) Any DNA profile derived from a blood sample obtained pursuant to the provisions of *Part III* of the Bill.

*Clause 27* prescribes the purposes for which information stored on a DNA databank may be accessed and disclosed. These are as follows:

- (a) For the purposes of comparing DNA profiles in the course of a criminal investigation by the Police;
- (b) For the purpose of making the information available, in accordance with the Privacy Act 1993, to the person to whom the information relates;
- (c) For the purpose of administering the DNA databank.

The restrictions do not apply in respect of non-identifying information and in certain other limited circumstances.

*Authority to Obtain Blood Sample for DNA Databank*

*Clause 28* sets out the circumstances in which the Police may obtain blood samples for the purpose of deriving DNA profiles for storage on a DNA databank. Subject to any other enactment authorising the taking of a blood sample, such a blood sample may be taken only if—

- (a) The sample is taken—
  - (i) From a person who is aged 17 or over and who consents to provide the sample after being requested to do so; or
  - (ii) Pursuant to a court order from a person of any age who has been convicted of a relevant offence; and
- (b) The sample is taken in accordance with the procedures set out in *Part IV* of the Bill.

*Obtaining Blood Sample By Consent*

*Clause 29* provides that a Police officer may request any person who is aged 17 or over to provide a blood sample for the purposes of obtaining a DNA profile for storage in a DNA databank.

On making such a request, the Police officer must hand to the person a written notice in the prescribed form and containing the particulars set out in *clause 30*, and inform the person of certain matters, including the following:

- (a) The purpose of the request;
- (b) That the person is under no obligation to provide the sample;
- (c) That the person may wish to consult a lawyer before deciding whether or not to consent to giving the sample;
- (d) That the sample will be analysed, and information derived from the analysis may result in the person being charged with an offence.

*Clause 30* sets out the particulars that must be included in the notice handed to a person at the time of the making of a request to provide a blood sample.

*Clause 31* provides that a person who is under the age of 17 may not be requested to provide a blood sample for the purposes of obtaining a DNA profile for storage on a DNA databank, and that such a person is incapable of consenting to the taking of a blood sample from him or her.

*Clause 32* provides that the Police may combine a suspect request under *clause 6* with a databank request under *clause 29*.

*Clause 33* provides that no consent to the taking of a blood sample in response to a databank request is valid unless the consent is either in writing and signed by the person giving the consent, or is given orally and recorded on videotape. A written consent must be signified on the notice handed to the person, or on a copy of that notice. A videotaped consent must clearly show the making of the request, the handing to the person of the required notice, and the giving of consent. The clause also provides for the withdrawal of consent to the taking of a blood sample.

*Clause 34* provides that a person who is requested to provide a blood sample for databank purposes and who is in custody is entitled to consult privately with a lawyer with respect to the request. This right is subject to any measures reasonably necessary to prevent the person from escaping, or to ensure the safety of any person, or to prevent the person from damaging any property.

*Clause 35* provides that where a blood sample is taken from a person, with that person's consent, for databank purposes, consent to the use of that sample may be withdrawn at any time. In such a case, the sample and all information that relates to any analysis of the sample must be destroyed. Consent to the use of the sample may not be withdrawn if, after the sample is taken, the person is convicted of a relevant offence. Withdrawal of consent does not prevent the continued use of a sample for the purposes of a criminal investigation if the person also gave consent to the taking of the sample pursuant to a request made under *clause 6*.

*Obtaining Blood Sample By Court Order*

*Clause 36* provides that where any person (of whatever age) is convicted of a relevant offence, a Police officer of the rank of sergeant or above may apply, at the time of sentencing or at any time within 6 months of conviction, for an order requiring the convicted person to provide a blood sample for the purposes of obtaining a DNA profile for storage on a DNA databank. Such an application is to be made to a Judge of the court in which the convicted person was, or is to be, sentenced. The convicted person must be served with notice of the application, and is entitled to appear and adduce evidence at the hearing.

*Clause 37* provides that a Judge must make an order on an application made under *clause 36* if he or she is satisfied that the person has been convicted of a relevant offence and the conviction has not subsequently been quashed.

*Clause 38* provides that a further application under *clause 36* may not be made in respect of the same conviction without the leave of a Judge. Such leave may not be given unless the Judge is satisfied that it is necessary to obtain a further blood sample because—

- (a) The previous sample has been lost or destroyed; or
- (b) The condition of the sample prevents a proper analysis of the sample.

The Judge may also refuse a further application if satisfied that it is vexatious or an abuse of the process of the court.

#### *Form and Content of Databank Compulsion Order*

*Clause 39* provides that every databank compulsion order must be in the prescribed form, provides for a Judge to impose conditions on such orders, and sets out certain particulars that must be set out in such an order.

*Clause 40* sets out 2 special conditions that may be imposed on a databank compulsion order.

#### *Special Procedure for Persons Under 17*

*Clause 41* sets out special provisions that apply in relation to applications for a databank order made in relation to persons who are under the age of 17. Those provisions are similar to those that apply in respect of a suspect compulsion order sought under *Part II* in relation to a person who is under 17.

### PART IV

#### PROCEDURES FOR TAKING BLOOD SAMPLES

##### *Attendance of Respondent for Purposes of Taking Blood Sample*

*Clause 42* provides that where an order has been made under the Bill requiring a person to provide a blood sample, a Police officer of or above the rank of sergeant may apply to a Judge of the court in which the order was made for the issue of a warrant to arrest and detain the person for up to 24 hours until a blood sample is taken in accordance with the order.

*Clause 43* provides authority for a person who is being held in custody and who is required to provide a blood sample pursuant to a compulsion order to be taken to the place where the sample is to be taken. The Police are required to meet the costs of taking and returning the person from the place where the sample is taken.

*Clause 44* provides for a Judge to vary the terms of a compulsion order by varying the place where, or the date when, a blood sample is to be taken pursuant to the order. Either the Police or the person who is the subject of the order may so apply.

##### *Procedure for Taking Blood Samples*

*Clause 45* provides that a blood sample may be taken pursuant to the Bill in 2 ways—by taking a sample from a person's vein (a venous sample) or from a prick made to a person's finger or thumb (a fingerprick sample). Whether the sample is to be taken with the person's consent or pursuant to a compulsion order, the person may decide which method is to be used, but the Police may indicate that a particular method is preferred. However, where a person refuses to comply with a compulsion order and force is used to take the sample, the sample is to be taken by way of a fingerprick sample only.

*Clause 46* provides that blood samples may be taken pursuant to the Bill only by a medical practitioner or, with the consent of the person from whom the sample is taken, a registered nurse.

*Clause 47* provides that a person from whom a blood sample is to be taken pursuant to the Bill is entitled to choose 3 persons (a lawyer, a medical practitioner, and 1 other person) to be present when the sample is taken. A person who is under 17 is also entitled to the presence of a parent or guardian or other person having the care of the person.

The Police are required to ascertain whether or not the person from whom the sample is to be taken wishes to exercise his or her right to have the persons chosen by him or her present, and the Police must take all reasonable steps to ensure that each person so chosen is notified of where and when the sample is to be taken.

Where a sample is to be taken from a person who is under 17, a parent or guardian of that person may, unless the person objects, exercise the person's right on his or her behalf.

*Clause 48* makes it clear that nothing in the Bill—

- (a) Compels any medical practitioner or nurse to take any blood sample; or
- (b) Compels any person chosen pursuant to *clause 47* to be present during the taking of the sample.

*Clause 49* restricts the persons who may be present during the taking of a blood sample pursuant to the Bill.

*Clause 50* requires blood samples taken pursuant to the Bill to be taken in circumstances affording reasonable privacy to the person from whom the sample is taken.

*Clause 51* sets out the procedure to be followed when a blood sample is to be taken pursuant to a compulsion order. In particular, the clause authorises a member of the Police to use reasonable force to assist a medical practitioner to take a fingerprick sample from a person who refuses to allow a blood sample to be taken in accordance with the compulsion order.

*Clause 52* sets out how a venous sample taken pursuant to the Bill is to be dealt with. The sample is to be divided into 2 parts, and the person from whom it is taken must be given the option of retaining 1 part of the sample for analysis on his or her own behalf. If that person does not exercise that option at that stage, 1 part of the sample must be kept in safe custody and made available to him or her on application to the Commissioner of Police.

*Clause 53* sets out how a fingerprick sample taken pursuant to the Bill is to be dealt with. Because the sample produced will be insufficient to allow part of the sample to be made available to the person from whom it is taken, there is provision for that person to consent to the taking of a second fingerprick sample for that purpose.

#### *Analysis of Blood Samples and Other Material*

*Clause 54* provides that where genetic material believed to be from the person who committed an indictable offence is found at the scene of the offence or on the victim or anything worn or carried by the victim or on any person or thing reasonably believed to have been associated with the commission of the offence, any person who is charged with that offence and from whom a blood sample is taken pursuant to *Part II* of the Bill is entitled to have part of that genetic material sufficient for analysis made available to him or her, where it is practicable.

*Clause 55* provides that blood samples taken pursuant to the Bill are to be analysed in accordance with any procedures prescribed by regulations made under the Bill.

*Clause 56* provides that the results of any analysis of a blood sample taken pursuant to the Bill, and of any comparison made between that analysis and the analysis of any material to which *clause 54* applies, are to be made available by the Police to the person from whom the blood sample was taken.

#### *Disposal of Blood Samples*

*Clause 57* sets out certain circumstances in which blood samples taken pursuant to *Part II* of the Bill in relation to an offence, and records relating to the analysis of those samples, must be destroyed. These circumstances are as follows:

- (a) If the person from whom the sample was taken has not been charged with the offence, or a related offence (as defined in *clause 2 (2)*), within 12 months after the sample was taken:
- (b) If the person is charged with such an offence within that period, but the charge is later withdrawn or the person is acquitted of the offence:
- (c) If the person is convicted of the offence but the offence is not a relevant offence, when the appeal period applicable to the conviction expires.

Where a person from whom a blood sample is taken pursuant to *Part II* of the Bill in respect of a relevant offence is convicted of that offence, then the blood sample must be destroyed after a certain period. The particular period depends on when the sample was taken. In general, samples taken before **30 June 2000** must be destroyed by that date, and samples taken after that date may be kept only for as long as is necessary to enable a DNA profile to be obtained from the sample, and must then be destroyed.

*Clause 58* provides for the extension of the period after which a blood sample taken pursuant to *Part II* of the Bill must be destroyed if the person from whom it was taken is not charged with the offence in respect of which the sample was taken. A High Court Judge may extend that period for up to 12 months.

*Clause 59* requires blood samples taken pursuant to *Part III* of the Bill to be destroyed after a certain period. The particular period depends on when the sample was taken. In general, samples taken before **30 June 2000** must be destroyed by that date, and samples taken after that date may be kept only for as long as is necessary to enable a DNA profile to be obtained from the sample, and must then be destroyed.

It is also provided that where a blood sample is taken for DNA databank purposes in reliance on a person's conviction of a relevant offence, and that conviction is subsequently quashed, the sample and all information derived from the sample must be destroyed.

## PART V

### MISCELLANEOUS PROVISIONS

#### *Procedural and Evidential Provisions*

*Clause 60* provides that there is no right of appeal against any decision or order of a Judge made under the Bill.

*Clause 61* provides—

- (a) That proceedings under the Bill (other than an application for a databank compulsion order made at the time of sentencing) are civil proceedings for legal aid purposes:
- (b) That the making of a request to a person under the Bill to provide a blood sample does not, by itself, entitle the person to legal assistance under

section 158c of the Legal Services Act 1991 (which relates to the Police detention legal assistance scheme).

*Clause 62* is intended to remove any doubt that, under the Bill, questions of fact are to be determined on the balance of probabilities.

*Clause 63* relates to the admissibility of evidence obtained from a blood sample.

*Clause 64* provides that if a suspect who is required by a court order to provide a blood sample refuses to allow the sample to be taken, and the person's refusal means that no sample is taken, then, in any criminal proceedings against that person for the offence in respect of which the sample was sought, or a related offence,—

- (a) The prosecution may adduce evidence as to that refusal, unless the prejudicial effect of the evidence would outweigh its probative value; and
- (b) The court or jury may draw such inferences from the fact of refusal as appear to be proper in the circumstances, but a Judge may tell a jury that there may be good reasons for the refusal.

*Clause 65* provides that where a DNA profile derived from a blood sample taken from a person under the Bill is stored on a DNA databank, that profile is not admissible in evidence against that person in any criminal proceedings, except where the sample was taken from a suspect and the proceedings are for the offence in relation to which the sample was taken or a related offence. This means that the DNA profile may be used for investigative purposes, but if a DNA profile is required for the purposes of a prosecution, a further blood sample will be required.

A DNA profile may, however, be used in evidence for the purposes of an application under the Bill for a compulsion order.

#### *Miscellaneous Provisions*

*Clause 66* provides that the Bill does not limit or affect other enactments relating to the taking of blood samples or other bodily samples, or fingerprints or other particulars, and does not limit the circumstances in which such things (other than blood samples) may be taken from a person with their consent.

*Clause 67* makes it clear that no one is capable of giving consent, on behalf of another person, to the taking of a blood sample under the Bill.

*Clauses 68 and 69* relate to the payment of lawyers appointed to represent persons under 17 in respect of whom an application has been made for a compulsion order, and the payment of lay advocates who appear on behalf of such persons at the hearing of the application.

*Clause 70* specifies certain information relating to the operation of the Bill that must be included in the annual report of the Commissioner of Police.

*Clause 71* creates offences in respect of the contravention of certain provisions of the Bill. In particular, it is an offence for a person to refuse to allow a blood sample to be taken pursuant to a databank compulsion order, if the refusal results in no sample being taken.

*Clause 72* provides that proceedings for contempt of court may not be brought in respect of a refusal or failure to comply with a compulsion order.

*Clause 73* provides an indemnity against civil and criminal proceedings for a person who takes a blood sample using force in accordance with *clause 51 (2)*.

*Clause 74* empowers the making of regulations for the purposes of the Bill.

*Clause 75* empowers the making of rules of court for the purposes of the Bill.

*Clause 76* makes a consequential amendment to the Summary Proceedings Act 1957 so that the indictable offences created by *clause 71 (2)* are triable summarily.

The *Schedule* sets out those offences under the Crimes Act 1961 that are relevant offences for the purposes of the Bill.

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**CRIMINAL INVESTIGATIONS (BLOOD SAMPLES)**

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<p>40. Conditions of databank compulsion order</p> <p style="text-align: center;"><i>Special Procedure for Persons Under 17</i></p> <p>41. Application for databank compulsion order in relation to person under 17</p> <p style="text-align: center;">PART IV</p> <p style="text-align: center;">PROCEDURES FOR TAKING BLOOD SAMPLES</p> <p style="text-align: center;"><i>Attendance of Respondent for Purposes of Taking Blood Sample</i></p> <p>42. Judge may issue warrant for arrest and detention of respondent</p> <p>43. Attendance of person who is in custody</p> <p>44. Variation of place and time for taking sample</p> <p style="text-align: center;"><i>Procedure for Taking Blood Samples</i></p> <p>45. Method by which blood sample may be taken</p> <p>46. Persons authorised to take blood samples</p> <p>47. Person giving sample entitled to have certain other persons present</p> <p>48. Medical practitioner, etc. not compelled to take sample or be present</p> <p>49. Who may be present when blood sample taken</p> <p>50. Reasonable privacy to be afforded</p> <p>51. Procedure for taking blood sample pursuant to compulsion order</p> <p>52. How venous sample to be dealt with</p> <p>53. How fingerprick sample to be dealt with</p> <p style="text-align: center;"><i>Analysis of Blood Samples and Other Material</i></p> <p>54. Analysis of material found at scene, etc.</p> <p>55. Analysis of blood sample</p> <p>56. Records of analysis to be made available</p> <p style="text-align: center;"><i>Disposal of Blood Samples</i></p> <p>57. Disposal of blood samples and identifying information obtained under Part II</p>	<p>58. Extension of period for which sample may be retained</p> <p>59. Disposal of blood samples and identifying information obtained under Part III</p> <p style="text-align: center;">PART V</p> <p style="text-align: center;">MISCELLANEOUS PROVISIONS</p> <p style="text-align: center;"><i>Procedural and Evidential Provisions</i></p> <p>60. No right of appeal</p> <p>61. Application of Legal Services Act 1991</p> <p>62. Standard of proof</p> <p>63. Non-attendance of persons not to affect admissibility of evidence</p> <p>64. Inference may be drawn from refusal to allow sample to be taken</p> <p>65. Information stored on DNA databank not admissible in criminal proceedings</p> <p style="text-align: center;"><i>Miscellaneous Provisions</i></p> <p>66. Other powers and abilities to take bodily samples not affected</p> <p>67. Consent to taking of blood sample may not be given on person's behalf</p> <p>68. Payment of lawyer appointed to represent suspect</p> <p>69. Fees and expenses of lay advocate</p> <p>70. Information relating to blood samples to be included in annual report of Police</p> <p>71. Offences</p> <p>72. Breach of compulsion order not punishable as contempt</p> <p>73. Indemnity</p> <p>74. Regulations</p> <p>75. Rules</p> <p>76. Amendment to Summary Proceedings Act 1957 Schedule</p>
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## A BILL INTITULED

## An Act—

(a) To make provision for the taking of blood samples for use in criminal investigations; and

(b) To authorise—

(i) The establishment of a databank of information derived from the analysis of blood samples taken from certain persons; and

(ii) The use of information from that databank in criminal investigations; and

(c) To provide for matters incidental thereto

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement—**(1) This Act may be cited as the Criminal Investigations (Blood Samples) Act 1994.

(2) This Act shall come into force on the 1st day of July 1995.

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PART I

PRELIMINARY PROVISIONS

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

5 “Appeal period”, in relation to a conviction, means the period ending—

(a) When the time for bringing an appeal against the conviction expires, if no such appeal has been brought; or

10 (b) If an appeal against the conviction has been brought, when the appeal is finally determined or is withdrawn, whichever occurs first:

“Blood sample” or “sample” means a fingerprick sample or a venous sample:

15 “Commissioner” means the Commissioner of Police:

“Compulsion order” means a suspect compulsion order or a juvenile compulsion order or a databank compulsion order:

20 “Conviction” includes a finding, by a Youth Court, that a charge against a young person is proved; and “convicted” has a corresponding meaning:

“Databank compulsion order” means an order made under **section 37** of this Act:

25 “Databank request” means a request made pursuant to **section 29** of this Act:

“DNA databank” means a databank established pursuant to **section 25** of this Act:

30 “DNA profile”, in relation to any person, means information derived from an analysis of a sample of genetic material obtained from that person, being information—

(a) That is clearly identifiable as relating to that person; and

35 (b) That is able to be compared with information obtained from an analysis (using the same technique) of another sample of genetic material for the purpose of determining, with reasonable certainty, whether or not the other sample is from that person:

40 “Fingerprick sample” means a sample of capillary blood taken, in accordance with normal medical procedures, from the tip of a finger or thumb:

“Forensic comparison” means the comparison of a DNA profile stored in a DNA databank with another DNA profile, where that comparison is undertaken for the

purpose of confirming or disproving the involvement of any person in the commission of an offence:

“Indictable offence” has the same meaning as it has in the Summary Proceedings Act 1957:

“Juvenile compulsion order” means an order made under **section 23** of this Act: 5

“Parent” includes a step-parent:

“Relevant offence” means an offence against any of the provisions of the Crimes Act 1961 specified in the Schedule to this Act: 10

“Respondent”, in relation to an application for a compulsion order, means the person to whom the application relates:

“Specified date” means—

(a) The **30th day of June 2000**; or 15

(b) Such later date (being not later than the **30th day of June 2005**) as may be specified for the purposes of **sections 57** and **59** of this Act by the Governor-General by Order in Council,—

whichever is the later: 20

“Suspect”, in relation to an offence, means any person whom it is believed has or may have committed that offence, whether or not—

(a) That person has been charged with that offence; 25

or  
(b) There is good cause to suspect that person of having committed that offence:

“Suspect compulsion order” means an order made under **section 16** of this Act:

“Suspect request” means a request made pursuant to **section 6** of this Act: 30

“Venous sample” means a sample of venous blood taken in accordance with normal medical procedures.

(2) For the purposes of this Act, 2 offences are related to one another if the elements of the 2 offences comprise substantially the same act or omission. 35

**3. Act to bind the Crown**—This Act binds the Crown.

**4. Application**—(1) This Act applies to the investigation of offences committed, or believed to have been committed, before or after the commencement of this Act. 40

(2) **Part III** of this Act applies only to convictions entered after the commencement of this Act.

## PART II

## OBTAINING BLOOD SAMPLES FROM SUSPECTS

*Authority to Obtain Blood Sample from Suspects***5. Authority to take blood sample from suspect—**

5 Subject to **section 66** of this Act, in any criminal investigation in respect of an offence committed or believed to have been committed, a sample of blood may be taken from a suspect, for the purposes of that investigation, on behalf of any member of the Police only if—

10 (a) The offence is an indictable offence; and

(b) Either—

(i) In the case of a suspect who is of or over the age of 17 years, the suspect consents to the taking of that sample in accordance with **section 9** of this Act; or

15 (ii) In the case of a suspect who is of or over the age of 14 years but under 17 years, both the suspect and a parent or guardian of the suspect consent to the taking of that sample in accordance with **section 9** of this Act; or

20 (iii) The sample is taken under and in accordance with a suspect compulsion order or a juvenile compulsion order; and

(c) The sample is taken in accordance with the procedures set out in **Part IV** of this Act.

25 *Obtaining Blood Sample By Consent*

**6. Request to consent to taking of blood sample—**

(1) Subject to **section 8** of this Act, for the purposes of any criminal investigation in respect of an indictable offence committed or believed to have been committed, a member of the Police may request any suspect to give a blood sample if that member of the Police has reasonable grounds to believe that analysis of the sample would tend to confirm or disprove the suspect's involvement in the commission of the offence.

35 (2) Subject to **section 8** of this Act, on making a request under **subsection (1)** of this section, the member of the Police shall—

(a) Hand to the suspect to whom the request is made a written notice containing the particulars specified in **section 7 (b)** of this Act; and

40 (b) Inform the suspect, in a manner and in language that the suspect is likely to understand,—

(i) Of the offence in respect of which the request is made; and

- (ii) That the member of the Police has reasonable grounds to believe that analysis of a blood sample taken from the suspect would tend to confirm or disprove the suspect's involvement in the commission of that offence; and 5
- (iii) That the suspect is under no obligation to give the sample; and
- (iv) That if the suspect consents to the taking of the sample, the suspect may withdraw that consent at any time; and 10
- (v) That the suspect may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample; and
- (vi) That the sample will be analysed and may provide evidence that may be used against the suspect in criminal proceedings; and 15
- (vii) In a case where the offence is a relevant offence and there is good cause to suspect that the suspect committed that offence, that if the suspect refuses to consent to the taking of the sample, an application may be made to a High Court Judge for an order requiring the suspect to give a blood sample. 20

- 7. Form and content of notice**—Subject to section 8 of this Act, every notice given pursuant to section 6 (2) (a) of this Act— 25
- (a) Shall be in the prescribed form; and
- (b) Shall contain the following particulars:
- (i) A statement that it is believed that the suspect has or may have committed an indictable offence and is being requested to consent to the taking of a blood sample: 30
- (ii) A statement that there are reasonable grounds to believe that analysis of the sample would tend to confirm or disprove the suspect's involvement in the commission of that offence:
- (iii) A statement that the suspect is under no obligation to give the sample: 35
- (iv) A statement that if the suspect consents to the taking of the sample, the suspect may withdraw that consent at any time:
- (v) A statement that the suspect may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample: 40

(vi) A statement that the sample will be analysed and may provide evidence that may be used against the suspect in criminal proceedings:

5 (vii) A statement that if the offence is a relevant offence, and there is good cause to suspect that the suspect committed that offence, and the suspect refuses to consent to the taking of the sample, an application may be made to a High Court Judge for an order requiring the suspect to give a blood sample:

10 (viii) A summary of the provisions of **sections 45 and 46** of this Act relating to the procedure for taking the sample:

15 (ix) A statement that the suspect may request that the sample be taken in the presence of a medical practitioner, a lawyer, and one other person, each of the suspect's own choice:

20 (x) A summary of the provisions of **sections 52, 53, and 56** of this Act relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis:

(xi) A statement that the sample, and any information derived from any analysis of the sample, will be held by or on behalf of the Police:

25 (xii) A statement that if the offence is a relevant offence, and the suspect is convicted of the offence, information derived from any analysis of the sample will be held on a DNA databank:

30 (xiii) A reference to the provisions of **section 57** of this Act relating to the destruction of the sample and of any information derived from any analysis of the sample:

(xiv) Such other particulars as may be prescribed.

**8. Suspect requests to persons under 17**—(1) Nothing in **section 6** of this Act applies in respect of a suspect who is under the age of 14 years, and no such person shall be capable of consenting to the taking of a blood sample in response to a request made under that section.

40 (2) Where a suspect request is made under **section 6** of this Act to a suspect who is of or over the age of 14 years but under 17 years, that section and **section 7** of this Act shall apply subject to the following modifications:

(a) The member of the Police who makes the suspect request shall take all reasonable steps to ensure that a copy of the notice required by **section 6 (2) (a)** of this Act to be

handed to the suspect is also given to a parent or guardian of the suspect; and

(b) The member of the Police who makes the suspect request shall, in addition to informing the suspect of the matters specified in **section 6 (2) (b)** of this Act, inform the suspect— 5

(i) That the blood sample cannot be taken from the suspect unless both the suspect and a parent or guardian of the suspect consent to the taking of the sample; and 10

(ii) That no parent or guardian of the suspect is under any obligation to consent to the taking of the sample; and

(c) The notice required by **section 6 (2) (a)** of this Act to be handed to the suspect shall, in addition to the particulars specified in **section 7 (b)** of this Act, contain the following particulars: 15

(i) A statement that the blood sample cannot be taken from the suspect unless both the suspect and a parent or guardian of the suspect consent to the taking of the sample: 20

(ii) A statement that no parent or guardian of the suspect is under any obligation to consent to the taking of the sample:

(iii) A statement that any parent or guardian of the suspect may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample: 25

(iv) A statement that if a parent or guardian of the suspect consents to the taking of the sample, that parent or guardian may withdraw that consent at any time. 30

**9. Consent to taking of blood sample**—(1) No consent to the taking of a blood sample in response to a suspect request shall be valid unless—

(a) It is in writing and signed by the person giving the consent; or 35

(b) It is given orally and recorded on a videotape.

(2) Where any such consent is in writing, the consent shall be signified on the notice required by **section 6 (2) (a)** of this Act to be handed to the suspect at the time of the making of the suspect request, or on a copy of that notice. 40

(3) Where any such consent is recorded on a videotape, the videotape must clearly show,—

(a) In the case of a consent given by a suspect,—

- (i) The making of the suspect request to the suspect; and
- (ii) The handing to the suspect of the notice required by **section 6 (2) (a)** of this Act; and
- 5 (ii) The giving of consent to the taking of the sample:
- (b) In the case of a consent given by a parent or guardian of a suspect,—
- 10 (i) The handing to that person of the copy of the notice required by **section 6 (2) (a)** of this Act, as required by **section 8 (2) (a)** of this Act, or an acknowledgement by that person that a copy of that notice has been so given to him or her; and
- 15 (ii) The giving of consent to the taking of a sample from the suspect.

**10. Withdrawal of consent**—(1) Where any person consents to the taking of a blood sample in response to a suspect request,—

- 20 (a) That person may withdraw that consent at any time, either orally or in writing; and
- (b) On any such withdrawal, the suspect to whom the suspect request was made shall be deemed to have refused to consent to the taking of the sample.
- 25 (2) Where any such consent is withdrawn orally, that withdrawal shall be recorded in writing by a member of the Police as soon as practicable.

**11. Consent deemed to have been refused**—For the purposes of **sections 13, 16, 18, and 23** of this Act, on the expiry of the period of 48 hours after a request is made under **section 6** of this Act to a suspect, that suspect shall be deemed to have refused to consent to the taking of a blood sample in response to that request if,—

- 35 (a) In the case of a suspect request made to a person who is of or over the age of 17 years, that suspect has not, within that period, so consented; or
- (b) In the case of a suspect request made to a person who is under the age of 17 years, either—
- (i) That suspect; or
- 40 (ii) A parent or guardian of that suspect,— or both, have not, within that period, so consented.

**12. Right of suspect in custody to consult lawyer**—  
(1) Subject to **subsection (2)** of this section, every suspect to whom



a suspect request is made and who is in custody is entitled to consult privately with a lawyer with respect to that request.

(2) Nothing in **subsection (1)** of this section prevents the taking of such measures as are reasonably necessary—

- (a) To prevent the suspect from escaping; or 5
- (b) To ensure the safety of the suspect or any other person; or
- (c) To prevent the suspect from damaging any property.

*Obtaining Blood Sample By Court Order from Persons 17 and Over*

**13. Application for order authorising taking of blood sample**—(1) An application may be made in accordance with this section to a High Court Judge for an order requiring a suspect who is of or over the age of 17 years to give a blood sample in any case where— 10

- (a) There is good cause to suspect that the suspect has committed a relevant offence; and 15
- (b) The suspect has refused to consent to the taking of a blood sample in response to a suspect request made in respect of that offence.

(2) Every application under **subsection (1)** of this section shall be made by a commissioned officer of the Police, in writing and on oath, and shall set out the following particulars: 20

- (a) The facts relied on to show that there is good cause to suspect that the respondent has committed a relevant offence: 25
- (b) The reasons why it is considered necessary to obtain a suspect compulsion order in relation to the respondent, including the facts relied on to show that there are reasonable grounds to believe that analysis of a blood sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence. 30

(3) Subject to **section 15** of this Act, where an application is made under this section,—

- (a) The applicant shall serve notice of the application on the respondent; and 35
- (b) Both the applicant and the respondent are entitled to appear and to adduce evidence at the hearing of the application.

(4) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law. 40

**14. Prohibition against publication of name of respondent**—(1) Where an application is made under **section 13** of this Act, no person shall publish, in any report or account relating to any proceedings on that application, the name of the respondent, or any name or particulars likely to lead to the identification of the respondent, unless—

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(a) A High Court Judge, by order, permits such publication; or

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(b) At the time of the publication of the report or account, the respondent is charged with the offence to which the application relates.

(2) Nothing in this section shall be construed to limit or restrict the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to any judicial proceedings.

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**15. Information may be withheld from respondent**—

(1) Where an application is made under **section 13** of this Act, a High Court Judge may, on the *ex parte* application of the applicant, order that any information included in the application made under **section 13** of this Act shall not be disclosed to the respondent, and that information is not required to be included in the notice given to the respondent pursuant to **subsection (3) (a)** of that section.

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(2) On the hearing of any application made under **section 13** of this Act, the Judge may, on the application of the applicant, order that any evidence to be tendered on behalf of the applicant may be tendered in writing, and shall not be disclosed to the respondent. An application for such an order shall be heard in the absence of the respondent.

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(3) A Judge may not make an order under **subsection (1)** or **subsection (2)** of this section in relation to any information or evidence unless the Judge is satisfied—

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(a) That the disclosure of that information or evidence to the respondent would be likely—

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(i) To identify, or lead to the identification of, any member of the Police whose identity is being concealed, or was concealed, for the purposes of the investigation of any offence relevant to the application; or

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(ii) To endanger the safety of any person; or  
(iii) To substantially prejudice the investigation of the offence to which the application relates; and

(b) That the withholding of the information or evidence from the respondent would not be contrary to the interests of justice.

(4) Where, pursuant to an order made under **subsection (1)** of this section, any information is omitted from the notice served on the respondent pursuant to **section 13 (3) (a)** of this Act, the notice shall include a statement that information has been omitted from the notice pursuant to such an order.

(5) Notwithstanding any enactment or rule of law or rules of court entitling any party to any proceedings to demand the production of any documents, the respondent shall not be entitled to demand the production, for the purposes of the proceedings on the application made under **section 13** of this Act, of any document that contains information or evidence withheld from the respondent pursuant to an order made under **subsection (1)** of this section; but if any such document would, apart from this subsection, be required to be made available to the respondent, that document may be made available by making a copy of the document available with such deletions or alterations as are necessary.

(6) Nothing in this section shall be construed to limit or restrict the provisions of any other enactment relating to the prohibition or regulation of—

- (a) The disclosure of evidence tendered in any judicial proceedings; or
- (b) The publication of reports or particulars relating to any such proceedings.

**16. Judge may authorise blood sample to be taken—**

(1) On the hearing of an application for a suspect compulsion order, a High Court Judge may make an order requiring the respondent to give a sample of the respondent's blood if the Judge is satisfied that—

- (a) There is good cause to suspect that the respondent (being a person who is of or over the age of 17 years) has committed the relevant offence to which the application relates; and
- (b) Material reasonably believed to be from the body of a person who committed the offence has been found—
  - (i) At the scene of the offence; or
  - (ii) On the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

(iii) On any person or thing reasonably believed to have been associated with the commission of the offence; and

5 (c) There are reasonable grounds to believe that analysis of a blood sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence; and

(d) The respondent has refused to consent to the taking of a blood sample in response to a suspect request made

10 (e) In all the circumstances, it is reasonable to make the order.

(2) In considering whether or not to make a suspect compulsion order, the Judge shall have regard to—

15 (a) The nature and seriousness of the offence to which the application relates; and

(b) The type of analysis proposed in respect of the sample sought; and

20 (c) Any reasons given by the respondent for opposing the making of the order sought; and

(d) Any evidence regarding the importance, to the investigation of the offence, of obtaining a blood sample from the respondent; and

(e) Any other matter that the Judge considers relevant.

25 **17. Further applications for suspect compulsion order**—(1) Nothing in this Act—

(a) Prohibits the making of an application under **section 13** of this Act for a suspect compulsion order in respect of an offence; or

30 (b) Prohibits a Judge from making a suspect compulsion order in respect of an offence—

merely because such an order has previously been sought or made in respect of that offence, whether or not the previous application or order related to the same person.

35 (2) Notwithstanding anything in this section or in **section 16** of this Act, where a further application for a suspect compulsion order is made under **section 13** of this Act in respect of an offence in relation to which a previous application under **section 13** of this Act has been made, the Judge may refuse to

40 make the order sought if he or she is satisfied that the further application is vexatious or an abuse of the process of the court.

*Obtaining Blood Sample By Court Order from Persons Under 17*

- 18. Application for order authorising taking of blood sample from person under 17**—(1) An application may be made in accordance with this section to a High Court Judge for an order requiring a suspect who is under the age of 17 years to give a blood sample in any case where— 5
- (a) There is good cause to suspect that the suspect has committed a relevant offence; and
  - (b) The suspect may lawfully be prosecuted for that offence; and 10
  - (c) In the case of a suspect who is of or over the age of 14 years,—
    - (i) A suspect request has been made in respect of that offence to the suspect; but
    - (ii) Consent to the taking of a blood sample in response to the request has been refused, either by the suspect or by a parent or guardian of the suspect, or both. 15
- (2) Every application under **subsection (1)** of this section shall be made by a commissioned officer of the Police, in writing and on oath, and shall set out the following particulars: 20
- (a) The facts relied on to show that there is good cause to suspect that the respondent has committed a relevant offence:
  - (b) The reasons why it is considered necessary to obtain a juvenile compulsion order in relation to the respondent, including the facts relied on to show that there are reasonable grounds to believe that analysis of a blood sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence. 25 30
- (3) Subject to **section 15** of this Act (as applied by **section 20** of this Act), where an application is made under this section for a juvenile compulsion order,—
- (a) The applicant shall serve notice of the application on— 35
    - (i) The respondent; and
    - (ii) A parent or guardian or other person having the care of the respondent; and
    - (iii) Where a lay advocate is for the time being appointed in respect of the respondent under section 326 of the Children, Young Persons, and Their Families Act 1989, that lay advocate; and 40
  - (b) The following persons are entitled to appear and to adduce evidence at the hearing of the application:

- (i) The applicant:
- (ii) The respondent:
- (iii) Any lawyer who represents the respondent:
- 5 (iv) Any person who is a parent or guardian of, or  
who has the care of, the respondent:
- (v) Any lawyer representing any person referred to  
in **subparagraph (iv)** of this paragraph:
- 10 (vi) Any person on whom notice of the application  
is served pursuant to **paragraph (a) (iii)** of this subsection;  
and
- (vii) With the leave of a High Court Judge, any  
other person.

(4) In considering an application made under this section, the  
15 Judge may take into account any oral or documentary material  
that the Judge considers relevant, whether or not it would be  
admissible in a court of law.

**19. Prohibition against publication of name of  
respondent under 17—**(1) Where an application is made  
20 under **section 18** of this Act, no person shall publish, in any  
report or account relating to any proceedings on the  
application,—

- (a) The name of the respondent or the parents or guardians  
or any person having the care of the respondent; or
  - 25 (b) Any other name or particulars likely to lead to the  
identification of the respondent.
- (2) Nothing in **subsection (1)** of this section shall be construed  
to limit or restrict the provisions of any other enactment  
relating to the prohibition or regulation of the publication of  
reports or particulars relating to any judicial proceedings.

30 **20. Sections 15 and 17 to apply—**(1) **Section 15** of this Act  
shall apply in relation to—

- (a) An application made under **section 18** of this Act; and
- (b) The hearing of such an application—  
as if it were an application made under **section 13** of this Act,  
35 and, in any such case, any order made under **subsection (1)** or  
**subsection (2)** of **section 15** of this Act may apply not only in respect  
of the respondent but also in respect of any other person on  
whom notice of the application is required to be served or who  
is entitled to appear at the hearing.

40 (2) **Section 17** of this Act shall apply in respect of applications  
made under **section 18** of this Act as if they were applications  
made under **section 13** of this Act.

**21. Appointment of lawyer to represent respondent—**

(1) Where an application is made under **section 18** of this Act, then unless—

(a) The respondent is already represented by a lawyer in the proceedings; or

(b) The Judge is satisfied that legal representation has been arranged, or will be arranged, for the respondent in the proceedings,—

the Judge shall appoint a lawyer to represent the respondent in the proceedings.

(2) Where a Judge appoints a lawyer under **subsection (1)** of this section, the Judge shall, so far as practicable, appoint a lawyer who is, by reason of personality, cultural background, training, and experience, suitably qualified to represent the respondent.

(3) Where,—

(a) Pursuant to **subsection (1)** of this section, a Judge is required to appoint a lawyer to represent a respondent in any proceedings; and

(b) A lawyer has been appointed, pursuant to section 323 of the Children, Young Persons, and Their Families Act 1989, to represent the respondent in any proceedings,—

the Judge shall, where possible, appoint that lawyer under this section to represent the respondent.

Cf. 1989, No. 24, s. 323

**22. Further provisions relating to appointment of lawyer for respondent—**

(1) A lawyer appointed pursuant to **section 21** of this Act to represent a respondent in any proceedings on an application made under **section 18** of this Act shall have, in relation to the representation of that respondent in those proceedings, the same rights, powers, duties, privileges, and immunities that the lawyer would have had if he or she had not been appointed pursuant to **section 21** of this Act but had been retained by that respondent to provide legal representation.

(2) Where a lawyer is appointed pursuant to **section 21** of this Act to represent a respondent in any proceedings on an application made under **section 18** of this Act, that lawyer shall, if the respondent agrees, be entitled to represent that respondent—

(a) In any proceedings in respect of any warrant issued pursuant to **section 42** of this Act in respect of the respondent:

- (b) Where a juvenile compulsion order is made in respect of the respondent, in any proceedings on an application made under **section 44** of this Act in respect of the order.

5 Cf. 1989, No. 24, s. 324

**23. Judge may authorise blood sample to be taken—**

(1) On the hearing of an application for a juvenile compulsion order, a Judge may make an order requiring the respondent to give a sample of the respondent's blood if the Judge is satisfied that—

10 (a) There is good cause to suspect that the respondent (being a person who is under the age of 17 years) has committed the relevant offence to which the application relates; and

15 (b) The respondent may lawfully be prosecuted for that offence; and

(c) Where the respondent is of or over the age of 14 years,—

20 (i) A suspect request has been made in respect of that offence to the respondent; and

(ii) Consent to the taking of a blood sample in response to the request has been refused, either by the respondent or by a parent or guardian of the respondent, or both; and

25 (d) Material reasonably believed to be from the body of a person who committed the offence has been found—

(i) At the scene of the offence; or

(ii) On the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

30 (iii) On any person or thing reasonably believed to have been associated with the commission of the offence; and

(e) There are reasonable grounds to believe that analysis of a blood sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence; and

35 (f) In all the circumstances, it is reasonable to make the order.

(2) In considering whether or not to make a juvenile compulsion order, the Judge shall have regard to—

40 (a) The nature and seriousness of the offence to which the application relates; and

(b) The type of analysis proposed in respect of the sample sought; and



- (c) The age of the respondent; and
- (d) Any reasons given by—
  - (i) The respondent; and
  - (ii) Any parent, guardian, or person having the care of the respondent— 5
- for opposing the making of the order sought; and
- (e) Any evidence regarding the importance, to the investigation of the offence, of obtaining a blood sample from the respondent; and
- (f) Any other matter that the Judge considers relevant. 10

*Form and Content of Compulsion Order*

**24. Form and content of compulsion order**—(1) Every suspect compulsion order and every juvenile compulsion order shall be in the prescribed form.

(2) Every suspect compulsion order and every juvenile compulsion order shall be subject to such special conditions (if any) as the Judge may specify in the order. 15

(3) Without limiting the generality of **subsection (2)** of this section, if the Judge is satisfied that it is necessary to do so on account of the respondent's state of health, the Judge may impose on a suspect compulsion order or a juvenile compulsion order the condition that a blood sample shall not be taken from the respondent pursuant to the order unless an independent medical practitioner approved by the Judge certifies that the taking of the sample will not cause serious harm to the health of the respondent. 20 25

(4) Every suspect compulsion order and every juvenile compulsion order shall contain the following particulars:

- (a) Subject to any conditions specified in the order, the date on which, and the place where, the suspect is to attend to give a blood sample: 30
- (b) A summary of the provisions of **sections 45 and 46** of this Act relating to the procedure for taking the sample:
- (c) A statement that the suspect may request that the sample be taken in the presence of— 35
  - (i) A medical practitioner, a lawyer, and one other person, each of the suspect's own choice; and
  - (ii) In the case of a juvenile compulsion order, a parent or guardian or other person who has the care of the suspect: 40
- (d) A summary of the provisions of **sections 52, 53 and 56** of this Act relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis:

- (e) Any conditions specified by the Judge pursuant to **subsection (2)** of this section:
- (f) A statement that if the suspect refuses to allow a sample of blood to be taken, a member of the Police may use or cause to be used reasonable force to assist a medical practitioner to take a fingerprick sample:
- (g) A statement that the sample, and any information derived from any analysis of the sample, will be held by or on behalf of the Police:
- (h) A statement that if the offence is a relevant offence, and the suspect is convicted of the offence, information derived from any analysis of the sample will be held on a DNA databank:
- (i) A reference to the provisions of **section 57** of this Act relating to the destruction of the sample and of any information derived from any analysis of the sample:
- (j) Such other particulars as may be prescribed.

### PART III

#### DNA DATABANK

##### *DNA Databank*

- 25. DNA databank**—There may be maintained (whether in computerised form or otherwise), by or on behalf of the Police, a database of DNA profiles derived from blood samples taken pursuant to this Act.
- 26. Information that may be kept on DNA databank**—Subject to **sections 57** and **59** of this Act, the following information may be stored on a DNA databank:
- (a) Any DNA profile derived from a blood sample taken from any person pursuant to **Part II** of this Act, where—
- (i) The offence in respect of which the sample is taken is a relevant offence; and
- (ii) That person is convicted of that offence (unless the conviction is subsequently quashed):
- (b) Subject to **section 35** of this Act, any DNA profile taken from any person pursuant to this Part of this Act.
- 27. Access to and disclosure of information on DNA databank**—(1) Subject to **subsections (2) to (4)** of this section, no person may have access to any information stored on a DNA databank, and no person shall disclose any such information, except for one or more of the following purposes:
- (a) For the purpose of forensic comparison in the course of a criminal investigation by the Police:

- (b) For the purpose of making the information available, in accordance with the Privacy Act 1993, to the person to whom the information relates:
- (c) For the purpose of administering the DNA databank.
- (2) Nothing in this section applies in relation to information that does not identify any person. 5
- (3) Nothing in this section limits the jurisdiction of the Privacy Commissioner under the Privacy Act 1993 to investigate any complaint made under Part VIII of that Act.
- (4) Nothing in this section prohibits access to, or the disclosure of, any information for the purposes of— 10
- (a) Any application for a compulsion order; or
- (b) The prosecution of an offence against **section 71 (2)** of this Act.

*Authority to Obtain Blood Sample for DNA Databank* 15

**28. Authority to take blood sample for DNA databank**—Subject to **section 66** of this Act, a sample of blood may be taken from a person for the purposes of including that person's DNA profile in a DNA databank only if—

- (a) Either— 20
- (i) That person consents to the taking of that sample in accordance with **section 33** of this Act; or
- (ii) The sample is taken under and in accordance with a databank compulsion order; and
- (b) The sample is taken in accordance with the procedures set out in **Part IV** of this Act. 25

*Obtaining Blood Sample By Consent*

**29. Request to consent to taking of blood sample**—

- (1) For the purposes of obtaining a DNA profile for storage on a DNA databank, a member of the Police may request any person who is of or over the age of 17 years to give a blood sample. 30
- (2) On making a request under **subsection (1)** of this section, the member of the Police shall—
- (a) Hand to the person to whom the request is made a written notice containing the particulars specified in **section 30 (b)** of this Act; and 35
- (b) Inform the person, in a manner and in language that the person is likely to understand,—
- (i) That the purpose of the request is to obtain information that will be stored on a DNA databank and that may be used by the Police in the investigation of criminal offences; and 40

(ii) That the person is under no obligation to give the blood sample requested; and

(iii) That if the person consents to the taking of the sample, the person may withdraw that consent at any time; and

(iv) That the person may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample; and

(v) That the sample will be analysed, and information derived from the analysis may result in the person being charged with a criminal offence.

**30. Form and content of notice**—Every notice given pursuant to **section 29 (2) (a)** of this Act—

(a) Shall be in the prescribed form; and

(b) Shall contain the following particulars:

(i) A statement setting out the purpose for which the sample is required:

(ii) A statement that the person is under no obligation to give the sample:

(iii) A statement that if the person consents to the taking of the sample, the person may withdraw that consent at any time:

(iv) A statement that the person may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample:

(v) A statement that the sample will be analysed, and information derived from that analysis may result in the person being charged with a criminal offence:

(vi) A summary of the provisions of **sections 45 and 46** of this Act relating to the procedure for taking the sample:

(vii) A statement that the person may request that the sample be taken in the presence of a medical practitioner, a lawyer, and one other person, each of the person's own choice:

(viii) A summary of the provisions of **sections 52, 53 and 56** of this Act relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis:

(ix) A summary of the provisions of **section 27** of this Act relating to the use of any DNA profile obtained from the sample:

(x) A summary of the provisions of **section 35** of this Act relating to the removal of information from a DNA databank:

(xi) Such other particulars as may be prescribed.

- 31. Section 29 not to apply to persons under 17—** 5  
Nothing in **section 29** of this Act applies in respect of a person who is under the age of 17 years, and no such person shall be capable of consenting to the taking of a blood sample in response to a request made under that section.
- 32. Dual purpose requests—** A databank request made to any person may be combined with a suspect request, and, in any such case,— 10
- (a) The member of the Police making the requests shall, in addition to informing the person of the matters set out in **sections 6 (2) (b)** and **29 (2) (b)** of this Act, inform the person— 15
- (i) That he or she may consent to the taking of a blood sample in response to both requests, or in response to only one of the requests, or may refuse both of the requests; and 20
- (ii) That if he or she consents to the taking of a blood sample in response to only one of the requests, then, subject to **section 26 (a)** of this Act, information derived from the analysis of that sample may be used for the purposes of that request only; and 25
- (b) Instead of handing the person the notices required by **sections 6 (2) (a)** and **29 (2) (a)** of this Act, the member of the Police shall hand the person a written notice in the prescribed form containing—
- (i) The matters specified in **sections 7 (b)** and **30 (b)** of this Act; and 30
- (ii) A statement specifying the matters set out in **subparagraphs (i)** and **(ii)** of **paragraph (a)** of this subsection; and
- (iii) Such other particulars as may be prescribed; 35  
and
- (c) **Sections 9 (2), 9 (3), 33 (2), and 33 (3) (b)** of this Act shall be read as if the references in those provisions to **section 6 (2) (a)** or, as the case requires, **section 29 (2) (a)** of this Act were references to **paragraph (b)** of this section. 40

**33. Consent to taking of blood sample**—(1) No consent to the taking of a blood sample in response to a databank request shall be valid unless—

- 5 (a) It is in writing and signed by the person giving the consent; or
- (b) It is given orally and recorded on a videotape.
- (2) Where any such consent is in writing, the consent shall be signified on the notice required by **section 29 (2) (a)** of this Act to be handed to the person at the time of the making of the  
10 databank request, or on a copy of that notice.
- (3) Where any such consent is recorded on a videotape, the videotape must clearly show—
  - (a) The making of the databank request to the person concerned; and
  - 15 (b) The handing to that person of the notice required by **section 29 (2) (a)** of this Act; and
  - (c) The giving of consent to the taking of the sample.
- (4) Any person who gives such consent may withdraw that consent at any time, either orally or in writing.
- 20 (5) Where any such consent is withdrawn orally, that withdrawal shall be recorded in writing by a member of the Police as soon as practicable.

**34. Right of person in custody to consult lawyer**—

- 25 (1) Subject to **subsection (2)** of this section, every person to whom a databank request is made and who is in custody is entitled to consult privately with a lawyer with respect to that request.
- (2) Nothing in **subsection (1)** of this section prevents the taking of such measures as are reasonably necessary—
  - 30 (a) To prevent the person to whom the request is made from escaping; or
  - (b) To ensure the safety of that person or any other person; or
  - (c) To prevent that person from damaging any property.

**35. Withdrawal of consent after sample taken**—

- 35 (1) Subject to **subsections (2) and (3)** of this section, where, pursuant to a consent given in accordance with **section 33** of this Act, a blood sample is taken from any person, that person may at any time, by notice in writing to the Commissioner, withdraw that person's consent to the use of that blood sample,  
40 and in any such case the Commissioner shall ensure that—
  - (a) The sample; and
  - (b) Every record of any analysis of the sample carried out on behalf of any member of the Police; and

- (c) Every record, to the extent that it contains—
- (i) Information about the sample; and
  - (ii) Particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,—
- are destroyed as soon as practicable. 5
- (2) Nothing in **subsection (1)** of this section applies in respect of any blood sample in any case where, after the sample has been taken, the person from whom the sample was taken has been convicted of a relevant offence (unless that conviction has been quashed). 10
- (3) Where—
- (a) A databank request has been combined with a suspect request; and
  - (b) The person to whom the requests have been made has consented to the taking of a blood sample in response to both requests; and 15
  - (c) Pursuant to **subsection (1)** of this section, the person withdraws his or her consent to the use of the blood sample for the purposes of the databank request,— 20
- then, notwithstanding anything in **subsection (1)** of this section, that blood sample and any information derived from any analysis of that sample may continue to be dealt with in accordance with the consent given in response to the suspect request. 25

*Obtaining Blood Sample By Court Order*

**36. Application for order authorising taking of blood sample**—(1) Where a person is convicted of a relevant offence, a member of the Police who is of or above the rank of sergeant may apply, in accordance with this section, to a Judge of the appropriate court for an order requiring that person to give a blood sample. 30

(2) For the purposes of this section, the appropriate court, in relation to a person in respect of whose conviction for a relevant offence a databank compulsion order is sought, is the court before which that person was sentenced, or is due to appear for sentence, in respect of that offence. 35

(3) An application under **subsection (1)** of this section may be made—

- (a) At the time of the person's sentencing for the offence; or 40
- (b) At any time within 6 months after the day on which the person was convicted of the offence (unless the conviction for the offence has been quashed).

(4) Where an application is made under this section,—

- (a) The applicant shall serve notice of the application on the respondent; and
- (b) Both the applicant and the respondent are entitled to appear and to adduce evidence at the hearing of the application.

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**37. Judge to authorise blood sample to be taken—**

(1) On the hearing of an application for a databank compulsion order, the Judge shall make an order requiring the respondent to give a sample of the respondent's blood if the Judge is satisfied—

10

- (a) That the respondent has been convicted of the relevant offence to which the application relates; and
  - (b) That the conviction has not been quashed.
- (2) Where—

15

- (a) An order is made under this section in reliance on a person's conviction of a relevant offence; and
- (b) Before a blood sample is taken pursuant to the order, that conviction is quashed,—

the order shall cease to be in force.

20

**38. Further application for databank compulsion order—**(1) If an application under **section 36** of this Act has been made and finally determined in respect of a person's conviction, no further application may be made under that section in relation to that conviction without the leave of a Judge of the court to which the previous application was made.

25

(2) A Judge shall not grant leave under **subsection (1)** of this section unless he or she is satisfied that it is necessary to obtain another blood sample from the respondent because—

30

- (a) The sample taken pursuant to a databank compulsion order made on the previous application—
  - (i) Has been lost; or
  - (ii) Has been destroyed (other than pursuant to **subsection (1)** or **subsection (2)** of **section 59** of this Act); or

35

- (b) A proper analysis of the sample taken pursuant to a databank compulsion order made on the previous application has not been possible on account of the condition of that sample.

40

(3) Notwithstanding anything in this section or in **section 37** of this Act, where a further application for a databank compulsion order is made under **section 36** of this Act in respect of a conviction in relation to which a previous application under **section 36** of this Act has been made, the Judge may refuse to



make the order sought if he or she is satisfied that the further application is vexatious or an abuse of the process of the court.

*Form and Content of Databank Compulsion Order*

**39. Form and content of databank compulsion order—**

- (1) Every databank compulsion order shall be in the prescribed form. 5
- (2) Every databank compulsion order shall be subject to—
- (a) Such of the conditions specified in **section 40** of this Act as the Judge may specify in the order; and
- (b) Such other reasonable conditions (if any) as the Judge may specify in the order. 10
- (3) Every databank compulsion order shall contain the following particulars:
- (a) Subject to any conditions specified in the order, the date on which, and the place where, the person to whom the order relates is to attend to give a blood sample: 15
- (b) A summary of the provisions of **sections 45** and **46** of this Act relating to the procedure for taking the sample:
- (c) A statement that the person may request that the sample be taken in the presence of a medical practitioner, a lawyer, and one other person, each of the person's own choice: 20
- (d) A summary of the provisions of **sections 52, 53**, and **56** of this Act relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis: 25
- (e) A summary of the provisions of **section 27** of this Act relating to the use of any DNA profile obtained from the sample:
- (f) Any conditions specified by the Judge pursuant to **subsection (2)** of this section: 30
- (g) A statement that if the person refuses to allow a sample of blood to be taken, a member of the Police may use or cause to be used reasonable force to assist a medical practitioner to take a fingerprick sample: 35
- (h) Such other particulars as may be prescribed.

**40. Conditions of databank compulsion order—**

- Without limiting **subsection (2) (b)** of **section 39** of this Act, either or both of the following conditions may be imposed pursuant to **subsection (2) (a)** of that section on a databank compulsion order: 40
- (a) A condition that the blood sample authorised to be taken by the order may not be taken until the expiry of the

appeal period applicable to the conviction in respect of which the order is made:

- 5 (b) If the Judge is satisfied that it is necessary to do so on account of the respondent's state of health, a condition that the blood sample shall not be taken from the respondent unless an independent medical practitioner approved by the Judge certifies that the taking of the sample will not cause serious harm to the health of that person.

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*Special Procedure for Persons Under 17*

**41. Application for databank compulsion order in relation to person under 17—**(1) Where an application is made under **section 36** of this Act in respect of a person who is under the age of 17 years, that section shall apply subject to the following modifications:

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- (a) The applicant shall also serve notice of the application on—

(i) A parent or guardian or other person having the care of the respondent; and

20

(ii) Where a lay advocate is for the time being appointed in respect of the respondent under **section 326** of the Children, Young Persons, and Their Families Act 1989, that lay advocate:

- (b) The following persons are entitled to appear and to adduce evidence at the hearing of the application:

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(i) The applicant:

(ii) The respondent:

(iii) Any lawyer who represents the respondent:

30

(iv) Any person who is a parent or guardian of, or who has the care of, the respondent:

(v) Any lawyer representing any person referred to in **subparagraph (iv)** of this paragraph:

(vi) Any person on whom notice of the application is served pursuant to **paragraph (a) (ii)** of this subsection:

35

(vii) With the leave of a Judge of the court to which the application was made, any other person.

(2) The provisions of **sections 21** and **22** of this Act (which relate to the appointment of a lawyer to represent a respondent who is under 17) shall apply in relation to an application to which **subsection (1)** of this section applies as if the application were an application made under **section 18** of this Act.

40

## PART IV

## PROCEDURES FOR TAKING BLOOD SAMPLES

*Attendance of Respondent for Purposes of Taking Blood Sample*

**42. Judge may issue warrant for arrest and detention of respondent**—(1) Where a compulsion order is made, a Judge 5  
of the appropriate court may, on application made by the applicant for the order or by any other member of the Police who is of or above the rank of sergeant, at the time of making the order or at any time after that, direct the issue of a warrant to arrest the respondent and detain him or her until a blood 10  
sample is taken in accordance with the compulsion order.

(2) For the purposes of **subsection (1)** of this section, the appropriate court is the court in which the compulsion order was made.

(3) Every warrant issued pursuant to **subsection (1)** of this section in respect of a compulsion order shall— 15

(a) Be in the prescribed form; and

(b) Authorise—

(i) The arrest of the person to whom the order relates; and 20

(ii) The detention of that person for as long as is necessary to take a blood sample from that person in accordance with the order, but in no case longer than 24 hours; and

(c) Expire— 25

(i) Immediately after a blood sample is taken from the person to whom the order relates in accordance with the order; or

(ii) On the expiry of the date specified in the order as the date on which that person is required to give a 30  
blood sample,—  
whichever occurs first.

**43. Attendance of person who is in custody**—(1) Where a person in respect of whom a compulsion order is made is detained in the custody of the Police or the Director-General of Social Welfare or in any penal institution, the person having 35  
custody of that person shall, without further authority than this section, cause that person to attend at the place where, and at the time when, a blood sample is to be taken in accordance with that order. 40

(2) Any expenses incurred by any person (other than the Commissioner)—

- (a) In bringing a person to whom **subsection (1)** of this section applies to the place where the blood sample is to be taken; and
- 5 (b) In returning that person to the place where he or she is required to be detained,—  
including the expenses of that person's maintenance and custody while he or she is absent from the place where he or she would otherwise be detained, shall be met by the Commissioner.

10 **44. Variation of place and time for taking sample—**

- (1) Where a compulsion order is made, the applicant for the order (or any other member of the Police who is of or above the rank of sergeant) or the respondent may at any time apply to a Judge of the appropriate court to vary the order by—
- 15 (a) Varying the date on which the respondent is to attend to give a blood sample in accordance with the order; or
- (b) Varying the place where the respondent is to so attend,—  
or both.
- (2) For the purposes of **subsection (1)** of this section, the  
20 appropriate court is the court in which the compulsion order was made.
- (3) An application may be made under this section at any time, whether before or after the date specified in the compulsion order as the date on which the respondent is to  
25 attend to give a blood sample.
- (4) On an application made under **subsection (1)** of this section, a Judge may, if he or she considers it appropriate to do so, vary the compulsion order in such manner as the Judge thinks fit.

*Procedure for Taking Blood Samples*

30 **45. Method by which blood sample may be taken—**

- (1) Subject to **subsections (2)** and **(3)** of this section, a blood sample taken—
- (a) With the consent of a person given in response to a suspect request or a databank request; or
- 35 (b) Pursuant to a compulsion order—  
may be taken by way of a venous sample or a fingerprick sample.
- (2) In the case of a blood sample to which **subsection (1) (a)** of this section applies, the person from whom the sample is to be  
40 taken shall decide which of those methods shall be used to take the sample.
- (3) In the case of a blood sample to which **subsection (1) (b)** of this section applies,—

- (a) The person from whom the sample is to be taken shall be given an opportunity to choose which of those 2 methods shall be used to take the sample:
- (b) If the person agrees to give a blood sample in compliance with the compulsion order, the sample shall be taken by the method chosen by that person: 5
- (c) If the person refuses to give a blood sample in compliance with the compulsion order, any blood sample taken using force in accordance with **section 51 (2)** of this Act shall be taken by way of a fingerprick sample. 10
- (4) Nothing in **subsection (2)** or **subsection (3) (a)** of this section prevents any member of the Police from indicating to the person from whom the sample is to be taken that the Police prefer that a particular method of taking the sample be used.
- 46. Persons authorised to take blood samples**—Any blood sample taken from a person pursuant to this Act shall— 15
- (a) Subject to **section 51 (2)** of this Act, be taken only by a medical practitioner or, with the agreement of that person, by a registered nurse; and
- (b) Be taken in accordance with the prescribed procedure (if any). 20
- 47. Person giving sample entitled to have certain other persons present**—(1) A person from whom a blood sample is to be taken pursuant to this Act is entitled to have present during the taking of the sample— 25
- (a) A medical practitioner, a lawyer, and one other person, each of whom shall be chosen by that person; and
- (b) In the case of a blood sample taken from a person who is under the age of 17 years, a parent or guardian or other person who has the care of that person. 30
- (2) The member of the Police who is responsible for arranging the taking of a blood sample from a person pursuant to this Act shall,—
- (a) A reasonable time before that sample is to be taken, ascertain whether or not that person wishes to exercise the right conferred on that person by **subsection (1)** of this section and, if so, the name of the person or persons chosen by that person pursuant to that subsection; and 35
- (b) Take all reasonable steps to ensure that each person so chosen is notified— 40

(i) That the person from whom the sample is to be taken wishes him or her to be present during the taking of the sample; and

5 (ii) Of the date on which, and the time and place at which, the sample is to be taken.

(3) Notwithstanding anything in paragraph (a) of subsection (1) of this section, where a blood sample is to be taken from a person who is under the age of 17 years, the persons referred to in that paragraph may, unless the person from whom the sample is to  
10 be taken objects, be chosen, on that person's behalf, by a parent or guardian or other person who has the care of that person, and in any such case the provisions of subsection (2) of this section shall apply with all necessary modifications.

**48. Medical practitioner, etc. not compelled to take sample or be present—**Nothing in this Act—

- 15 (a) Compels any medical practitioner or registered nurse to take a blood sample from any person; or  
(b) Compels any medical practitioner, lawyer, or other person chosen pursuant to subsection (1) (a) or subsection  
20 (3) of section 47 of this Act, or any person referred to in section 47 (1) (b) of this Act, to be present during the taking of any such sample.

**49. Who may be present when blood sample taken—**

(1) No person shall be present during the taking of a blood  
25 sample from a person pursuant to this Act except—

- (a) A member of the Police, who, where practicable, shall be of the same sex as the person:  
(b) The medical practitioner or registered nurse who is to take the sample:  
30 (c) Any person who is chosen, pursuant to subsection (1) or subsection (3) of section 47 of this Act, by or on behalf of the person from whom the sample is to be taken:  
(d) Any person referred to in section 47 (1) (b) of this Act, if the person from whom the sample is to be taken wishes  
35 the person to be present:  
(e) Where the person from whom the sample is to be taken is in custody, any person who is for the time being guarding that person.

(2) Where a blood sample is taken from a suspect pursuant  
40 to—

- (a) Any consent given in response to a suspect request; or  
(b) A suspect compulsion order or a juvenile compulsion order,—

no member of the Police who is involved in the investigation of the offence in respect of which the blood sample is to be taken shall be present during the taking of the sample.

**50. Reasonable privacy to be afforded**—Subject to section 49 of this Act, a blood sample taken from a person pursuant to this Act shall be taken in circumstances affording reasonable privacy to that person. 5

**51. Procedure for taking blood sample pursuant to compulsion order**—(1) Where a blood sample is to be taken from a person pursuant to a compulsion order, the person who is to take the sample shall— 10

(a) First ascertain from the person whether he or she wishes the sample to be taken by way of a venous sample or a fingerprick sample; and

(b) Inform the person that if he or she does not allow the blood sample to be taken, a member of the Police may use or cause to be used reasonable force to assist a medical practitioner to take a fingerprick sample. 15

(2) If the person refuses to allow a blood sample to be taken in accordance with the compulsion order, a member of the Police may use or cause to be used reasonable force to assist a medical practitioner to take a fingerprick sample from that person. 20

(3) Where a member of the Police exercises the power conferred by subsection (2) of this section, that member of the Police shall, not later than 3 days after exercising that power, furnish to the Commissioner a written report on the exercise of that power. 25

**52. How venous sample to be dealt with**—(1) Subject to any regulations made under this Act, every venous sample taken pursuant to this Act shall be divided into 2 parts, and— 30

(a) Each part shall be placed in a separate container which shall then be sealed; and

(b) Every such part shall be deemed to be a blood sample for the purposes of this Act. 35

(2) Any anti-coagulant substance may be added to any venous sample by placing it in the container, whether before or after the sample is taken and placed in the container.

(3) On the taking of a venous sample pursuant to this Act, the person taking the sample shall— 40

- (a) Ask the person from whom the sample is taken whether or not he or she wishes to have the sample analysed on his or her own behalf; and
- 5 (b) If that person responds in the affirmative, forthwith deliver one part of the sample to—
- (i) That person; or
- (ii) If that person is in custody (other than pursuant to a warrant issued pursuant to **section 42** of this Act), any person nominated by that person for the purpose.
- 10 (4) Where the person from whom the sample is taken responds in the negative, or fails or refuses to respond, to the question put to him or her in accordance with **subsection (3) (a)** of this section, the person taking the sample shall—
- 15 (a) Tell the person—
- (i) That one part of the sample will be kept in safe custody; and
- (ii) That he or she has the right, at any time before the sample is destroyed, to apply to the Commissioner for that part of the sample to be made available to him or her; and
- 20 (b) Cause one part of the sample to be delivered to a person for the time being designated by the Commissioner for the purpose, who shall arrange for the sample to be kept in safe custody until it is dealt with in accordance with another provision of this Act.
- 25 (5) Subject to **sections 57** and **59** of this Act, any person from whom a blood sample is taken pursuant to this Act and who does not exercise the right conferred on him or her by **subsection (3) (b)** of this section may at any time apply in writing, in the prescribed form, to the Commissioner for the part of the sample kept pursuant to **subsection (4) (b)** of this section to be made available to him or her, and the Commissioner shall arrange for that part of the sample to be made available in accordance with the terms of the application.
- 35

**53. How fingerprick sample to be dealt with—**(1) Subject to any regulations made under this Act, on the taking of a fingerprick sample pursuant to this Act, the person taking the sample shall—

- 40 (a) Place the sample in a container, which shall be sealed as soon as practicable after the sample has dried; and
- (b) Ask the person from whom the sample is taken whether or not he or she wishes to have a second fingerprick



- sample taken for the purposes of having the sample analysed on his or her own behalf; and
- (c) If the person responds in the affirmative, take a second fingerprick sample from the person, but only with that person's consent; and 5
- (d) Forthwith deliver any second sample to—
- (i) That person; or
  - (ii) If the person is in custody (other than pursuant to a warrant issued pursuant to **section 42** of this Act), any person nominated by that person for the purpose. 10

*Analysis of Blood Samples and Other Material*

**54. Analysis of material found at scene, etc.—If—**

- (a) Material reasonably believed to be from the body of a person who committed an indictable offence has been found— 15
- (i) At the scene of the offence; or
  - (ii) On the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or 20
  - (iii) On any person or thing reasonably believed to have been associated with the commission of the offence; and
- (b) A blood sample is taken pursuant to **Part II** of this Act from any person in respect of that offence; and 25
- (c) The person from whom the blood sample is taken is charged with that offence,—
- then, if practicable, a part of that material sufficient for analysis shall, at the request of the person so charged, be made available to him or her or to any other person nominated by him or her. 30

**55. Analysis of blood sample—**If any blood sample taken pursuant to this Act is analysed on behalf of any member of the Police, that sample shall be analysed in accordance with the prescribed procedure (if any). 35

**56. Records of analysis to be made available—**If any blood sample taken pursuant to this Act is analysed on behalf of any member of the Police, a copy of—

- (a) Any record of that analysis; and
- (b) Any record of any comparison made between that analysis and any analysis of any material of the kind referred to in **section 54** of this Act— 40

shall be made available, as soon as practicable, to the person from whom the sample was taken or to his or her lawyer.

*Disposal of Blood Samples*

5 **57. Disposal of blood samples and identifying information obtained under Part II—**(1) The Commissioner shall ensure that—

- (a) Every blood sample taken pursuant to **Part II** of this Act; and
- 10 (b) Every record of any analysis of any such blood sample carried out on behalf of any member of the Police; and
- (c) Every record, to the extent that it contains—
  - (i) Information about the sample; and
  - 15 (ii) Particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,—

is destroyed—

- (d) Subject to **section 58** of this Act, as soon as practicable after the expiry of the period of 12 months beginning on the date on which the sample is taken, if the person is not charged with the offence in relation to which the sample was taken, or a related offence, before the expiry of that period; or
- 25 (e) If the person is charged with such an offence before the expiry of that period, as soon as practicable after—
  - (i) The charge is withdrawn; or
  - (ii) The person is acquitted of the offence,—
 whichever occurs first; or
- 30 (f) If the person is convicted of such an offence, and the offence is not a relevant offence, as soon as practicable after the expiry of the appeal period applicable to the conviction.

(2) Where—

- 35 (a) A blood sample is taken pursuant to **Part II** of this Act from any person in respect of a relevant offence; and
- (b) That person is convicted of that offence,—

then,—

- 40 (c) Where the appeal period applicable to the conviction expires not later than 3 months before the specified date, the Commissioner shall ensure that the sample is destroyed not later than the close of the specified date; and
- (d) Where the appeal period applicable to the conviction expires on or after the specified date, or at any time

within the period of 3 months before the specified date, the Commissioner shall ensure that the sample is retained only for as long as is necessary to enable a DNA profile to be obtained from the sample, and is then destroyed.

5

(3) Nothing in this section requires the destruction of any DNA profile that may lawfully be retained in a DNA databank.

(4) Nothing in **subsection (1) (e)** of this section applies where the conviction for the offence is quashed on appeal and a new trial is ordered.

10

**58. Extension of period for which sample may be retained—**(1) Notwithstanding **paragraph (d) of subsection (1) of section 57** of this Act, a High Court Judge may from time to time, on application made in accordance with this section in respect of any blood sample taken pursuant to **Part II** of this Act and any record (of the kind referred to in **paragraph (b) or paragraph (c)** of that subsection) that relates to that sample, extend the period specified in **paragraph (d)** of that subsection (in this section referred to as the “relevant period”) after which that sample and those records must be destroyed.

15

20

(2) An application under **subsection (1)** of this section—

(a) May be made only by a commissioned officer of the Police; and

(b) Subject to **subsection (4)** of this section, may be made at any time before the relevant period (or any current extension of the relevant period granted pursuant to this section) has expired; and

25

(c) Shall be made *ex parte*.

(3) An extension or, as the case requires, a further extension of the relevant period may be granted under this section only if the High Court Judge is satisfied—

30

(a) That the person from whom the blood sample was taken has not been charged with the offence in relation to which the sample was taken; and

(b) That there is still good cause to suspect that the person committed that offence; and

35

(c) That there is a good reason for that person not having been charged with that offence; and

(d) That it is important to the investigation of that offence that the blood sample, and any records that would otherwise be required to be destroyed, be retained.

40

(4) An extension or, as the case requires, a further extension of the relevant period may be granted under this section for a period of not more than 6 months commencing on the day

after the day on which the relevant period (or, as the case requires, any current extension of the relevant period granted under this section) expires, but no extensions granted under this section shall extend the relevant period for any periods that amount, in the aggregate, to more than 12 months.

5 (5) Where an application for the extension or, as the case requires, the further extension of the relevant period is duly made before the expiry of that period (or, as the case requires, of any current extension of that period granted under this section), then, until the application is determined, the sample and any records to which the application relates may be retained notwithstanding the expiration of that period or, as the case requires, any extension of that period.

15 **59. Disposal of blood samples and identifying information obtained under Part III**—(1) Subject to subsections (3) and (4) of this section, the Commissioner shall ensure that every blood sample taken, pursuant to Part III of this Act, not later than 3 months before the specified date is destroyed not later than the close of the specified date.

20 (2) Subject to subsections (3) and (4) of this section, the Commissioner shall ensure that every blood sample taken, pursuant to Part III of this Act, on or after the specified date, or at any time within the period of 3 months before the specified date, is retained only for as long as is necessary to enable a DNA profile to be obtained from the sample, and is then destroyed.

25 (3) Nothing in subsection (1) or subsection (2) of this section authorises the retention of any blood sample that is required, by subsection (4) of this section or by section 57 of this Act, to be destroyed.

30 (4) Where—

(a) A blood sample is taken pursuant to a databank compulsion order made in reliance on a person's conviction of a relevant offence; and

35 (b) That conviction is subsequently quashed,—  
the Commissioner shall ensure that—

(c) That blood sample; and

(d) Every record of any analysis of that blood sample carried out on behalf of any member of the Police; and

40 (e) Every record, to the extent that it contains—

(i) Information about that sample; and

(ii) Particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,—

are destroyed as soon as practicable after the conviction is quashed.

## PART V

### MISCELLANEOUS PROVISIONS

#### *Procedural and Evidential Provisions* 5

**60. No right of appeal**—Subject to **section 44** of this Act, every decision and every order of a High Court Judge or a District Court Judge or a Youth Court Judge made under this Act shall be final.

**61. Application of Legal Services Act 1991**—(1) Subject to **subsection (2)** of this section, all proceedings under this Act shall be deemed, for the purposes of the Legal Services Act 1991, to be civil proceedings. 10

(2) Nothing in **subsection (1)** of this section applies in respect of any application for a databank compulsion order that is made at the time of a person's sentencing for an offence. 15

(3) For the avoidance of doubt, no person shall be taken to be a cautioned person for the purposes of **section 158c** of the Legal Services Act 1991 merely because—

(a) A suspect request or a databank request has been made to that person; and 20

(b) That person—

(i) Has been informed that he or she may wish to consult a lawyer in relation to that request; and

(ii) If he or she is in custody, is entitled, under **section 12** or **section 34** of this Act, to consult privately with a lawyer with respect to that request. 25

**62. Standard of proof**—Any question of fact to be determined by a High Court Judge or a District Court Judge or a Youth Court Judge on an application made under this Act shall be determined on the balance of probabilities. 30

**63. Non-attendance of persons not to affect admissibility of evidence**—No evidence obtained as a direct or indirect result of a blood sample taken from a person pursuant to this Act shall be inadmissible in any proceedings merely because any person chosen pursuant to **subsection (1)** or **subsection (3)** of **section 47** of this Act is not present during the taking of that sample, if all reasonable steps have been taken to ensure that the person so chosen is notified— 35

- (a) That the person from whom the sample is to be taken wishes him or her to be present during the taking of the sample; and
- 5 (b) Of the date on which, and the time and place at which, the sample is to be taken.

**64. Inference may be drawn from refusal to allow sample to be taken—**(1) Where—

- 10 (a) A suspect compulsion order or a juvenile compulsion order is made in respect of any person in relation to any offence; and
- (b) No blood sample is taken from that person by reason of that person's refusal to allow a blood sample to be taken from him or her in accordance with the order,—
- 15 then, in any criminal proceedings against that person for that offence or a related offence,—
- (c) Evidence may be given as to the refusal of that person to allow the taking of that blood sample, unless the prejudicial effect of the admission of the evidence would outweigh its probative value; and
- 20 (d) The court or jury may draw such inferences (if any) from the fact of refusal as appear to the court or, as the case may be, the jury to be proper in the circumstances, taking into account any evidence
- 25 given by or on behalf of the person who refused to consent to the taking of the blood sample.
- (2) In any proceedings in which the jury might draw an inference pursuant to **subsection (1)(d)** of this section, the Judge or, as the case may be, the District Court Judge may tell the
- 30 jury that there may be good reasons for the person's refusal to allow the taking of a blood sample.

Cf. 1980, No. 94, s. 57; 1991, No. 120, s. 2 (4)

**65. Information stored on DNA databank not admissible in criminal proceedings—**(1) Subject to **subsections (2) and (3)** of this section, no DNA profile that is—

- 35 (a) Derived from any blood sample taken pursuant to this Act from any person; and
- (b) Stored on a DNA databank—
- shall be admissible against that person in any criminal
- 40 proceedings.
- (2) Where a blood sample is taken pursuant to **Part II** of this Act, nothing in **subsection (1)** of this section applies in respect of

any proceedings for the offence in respect of which the sample was taken or for any related offence.

(3) Nothing in **subsection (1)** of this section applies in respect of any proceedings on any application for a compulsion order.

*Miscellaneous Provisions*

5

**66. Other powers and abilities to take bodily samples not affected**—Nothing in this Act—

- (a) Limits or affects any other enactment relating to the taking of a sample of blood, or any other bodily sample, from any person; or 10
- (b) Limits section 57 of the Police Act 1958 (which relates to the taking of fingerprints and other particulars from a person in custody); or
- (c) Shall be taken to limit or affect the circumstances in which any bodily sample (other than a sample of blood), or any other particulars of a person (including (without limitation) fingerprints and dental impressions) may be taken from any person with that person's consent. 15

**67. Consent to taking of blood sample may not be given on person's behalf**—Notwithstanding any other enactment or rule of law, no person shall be capable of consenting, on behalf of another person, to the taking of a blood sample from that other person in response to a suspect request or a databank request. 20

**68. Payment of lawyer appointed to represent suspect**—(1) Where a lawyer is appointed pursuant to **section 21** or **section 41 (2)** of this Act,— 25

- (a) The fees and expenses of that lawyer shall, in accordance with any regulations made under this Act, be paid out of the Crown Bank Account from money appropriated by Parliament for the purpose: 30
- (b) The bill of costs rendered by that lawyer shall be given to a Registrar of the court that so appointed that lawyer, and the Registrar may tax the bill of costs.

(2) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the bill may, within 14 days after the date of the decision, apply to a Judge of the court that so appointed that lawyer to review the decision; and the Judge may make such order varying or confirming the decision as the Judge considers fair and reasonable. 35

(3) Notwithstanding **subsection (1)** of this section, a Judge may, if he or she thinks proper, order any party to the proceedings to 40

refund to the Crown such amount as the Judge specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall be recoverable accordingly in any court of competent jurisdiction.

Cf. 1989, No. 24, s. 325

**69. Fees and expenses of lay advocate**—Where, pursuant to section 18 (3) (b) (vi) or section 41 (1) (b) (vi) of this Act, any person appears at the hearing of any application for a juvenile compulsion order or a databank compulsion order,—

(a) The fees and expenses of that person in connection with that appearance shall be deemed, for the purposes of section 328A of the Children, Young Persons, and Their Families Act 1989, to be fees and expenses of that person in his or her capacity as a lay advocate; and

(b) The provisions of that section of that Act shall apply in relation to those fees and expenses accordingly.

**70. Information relating to blood samples to be included in annual report of Police**—The Commissioner shall include, in every annual report prepared by him or her for the purposes of section 65 of the Police Act 1958, the following information for the period under review:

(a) The number of occasions on which a blood sample has been taken with the consent of a person given in response to a databank request:

(b) The number of applications for compulsion orders, with the number of each type of compulsion order stated separately:

(c) The number of applications referred to in paragraph (b) of this section that were granted, and the number that were refused:

(d) The number of prosecutions that have been instituted in which evidence obtained directly or indirectly from a blood sample taken pursuant to this Act has been adduced, and the result of those prosecutions:

(e) The number of occasions on which any member of the Police has used or caused to be used force to assist a medical practitioner to take a blood sample pursuant to a compulsion order:

(f) The total number of DNA profiles stored on a DNA databank at the end of the period under review, together with a breakdown of that total according to



whether the blood samples from which the DNA profiles were obtained were taken by consent or pursuant to a compulsion order.

Cf. 1978, No. 65, s. 29

- 71. Offences**—(1) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who,— 5
- (a) For the purpose of the providing of a blood sample pursuant to this Act, personates any other person; or
  - (b) Refuses to allow a sample of his or her blood to be taken pursuant to a databank compulsion order and, as a result of that refusal, no such sample is taken. 10
- (2) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 3 years who— 15
- (a) Knowingly falsifies any DNA profile stored on a DNA databank by the addition, deletion, or modification of any information in that profile; or
  - (b) Knowingly provides false information with the intent that it should be stored on a DNA databank; or 20
  - (c) Knowing that he or she is not authorised to do so, adds to or deletes from a DNA databank any information relating to any person; or
  - (d) In contravention of **section 27** of this Act,—
    - (i) Gains or attempts to gain access to a DNA databank; or 25
    - (ii) Discloses any information stored on a DNA databank.
- (3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who publishes any name or particular in contravention of **section 14** or **section 19** of this Act. 30

Cf. 1976, No. 19, s. 29; 1980, No. 94, s. 59

**72. Breach of compulsion order not punishable as contempt**—No proceedings for contempt of court shall be brought in respect of any refusal or failure to comply with a compulsion order. 35

**73. Indemnity**—(1) No proceedings, civil or criminal, shall lie against any person in respect of the taking of a blood sample using force in accordance with **section 51 (2)** of this Act. 40

(2) Nothing in **subsection (1)** of this section shall apply with respect to any proceeding on the ground of any negligent act or omission in the taking of any blood sample.

Cf. 1962, No. 135, s. 58D; 1988, No. 170, s. 7

5       **74. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing procedures for the taking of blood samples pursuant to this Act:
- 10       (b) Prescribing procedures for the analysis of blood samples taken pursuant to this Act:
- (c) Prescribing procedures for the storage of blood samples taken pursuant to this Act:
- (d) Providing for the administration of a DNA databank:
- 15       (e) Prescribing the forms of applications, notices, orders, and other documents for the purposes of this Act, and requiring the use of such forms:
- (f) Prescribing the procedure for the service of notices and other documents for the purposes of this Act, and  
20       providing for service to be dispensed with in such circumstances as are specified in the regulations:
- (g) Prescribing the amounts payable to any lawyer appointed pursuant to **section 21** or **section 41 (2)** of this Act:
- 25       (h) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

**75. Rules**—The Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of courts in proceedings under this Act.

30       **76. Amendment to Summary Proceedings Act 1957**—Part II of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The Criminal Investigations (Blood Samples) Act 1994

71 (2) Offences in respect of DNA databank”.

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## Section 2

SCHEDULE  
RELEVANT OFFENCES

Offence	Provision of Crimes Act 1961
Sexual violation	Section 128
Attempt to commit sexual violation	Section 129
Inducing sexual connection by coercion	Section 129A
Incest	Section 130
Sexual intercourse with girl under care or protection	Section 131
Sexual intercourse with girl under 12	Section 132 (1)
Attempted sexual intercourse with girl under 12	Section 132 (2)
Indecency with girl under 12	Section 133
Sexual intercourse with girl between 12 and 16	Section 134 (1)
Indecency with girl between 12 and 16	Section 134 (2)
Indecent assault on woman or girl	Section 135
Sexual intercourse with severely subnormal woman or girl	Section 138
Indecency with boy under 12	Section 140
Indecency with boy between 12 and 16	Section 140A
Indecent assault on man or boy	Section 141
Anal intercourse	Section 142
Murder	Sections 167, 168
Manslaughter	Section 171
Attempt to murder	Section 173
Wounding with intent to cause grievous bodily harm	Section 188 (1)
Wounding with intent to injure	Section 188 (2)
Injuring with intent to cause grievous bodily harm	Section 189 (1)
Aggravated wounding	Section 191 (1)
Aggravated injury	Section 191 (2)
Infecting with disease	Section 201
Abduction of woman or girl	Section 208
Kidnapping	Section 209
Robbery	Section 234
Aggravated robbery	Section 235
Aggravated burglary	Section 240A