

REPUBLIC OF SOUTH AFRICA

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**CRIMINAL LAW  
(FORENSIC PROCEDURES)  
AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75);  
explanatory summary of Bill published in Government Gazette No. 36415 of  
26 April 2013)  
(The English text is the official text of the Bill)*

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(MINISTER OF POLICE)

**[B 9—2013]**

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## GENERAL EXPLANATORY NOTE:

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

To amend the Criminal Procedure Act, 1977, so as to provide for the taking of specified bodily samples from certain categories of persons for the purposes of forensic DNA analysis; to provide for the conditions under which the samples or forensic DNA profiles derived from the samples may be retained or the periods within which they may be destroyed; to further regulate proof of certain facts by affidavit or certificate; to amend the South African Police Service Act, 1995, to establish and regulate the administration and maintenance of the National Forensic DNA Database of South Africa; to amend the Firearms Control Act, 2000, so as to further regulate the powers in respect of bodily samples for investigation purposes; and to amend the Explosives Act, 2003, so as to further regulate the powers in respect of bodily samples for investigation purposes; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 36A of Act 51 of 1977, as inserted by section 2 of Act 6 of 2010

1. Section 36A of the Criminal Procedure Act, 1977, is hereby amended—5
  - (a) by the insertion before the definition of “authorised person” of the following definition:

“(aA) **‘authorised officer’** means the police officer commanding the Division responsible for forensic services within the Service, or his or her delegate;”;

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  - (b) by the substitution for the definition of “authorised person” of the following definition:

“(b) **‘authorised person’ [means]—**

    - (i) with reference to photographic images, fingerprints or body-prints, means any police official or a member of the Independent Police Investigative Directorate referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), in the performance of his or her official duties; and15
    - (ii) with reference to buccal samples, means any police official or member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), who is not a

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- crime scene examiner, but has successfully undergone the training prescribed by the Minister of Health under the National Health Act, 2003 (Act No. 61 of 2003), in respect of the taking of a buccal sample;
- (iii) any registered medical practitioner or registered nurse as contemplated in the National Health Act, 2003 (Act No. 61 of 2003), providing services to the Department of Correctional Services.”;
- (c) by the insertion after the definition of “authorised person” of the following definitions:
- “(bA) **‘bodily sample’** means any type of sample taken from a person and includes intimate and non-intimate samples;
- (cB) **‘buccal sample’** means a sample of cellular material taken from the inside of a person’s mouth;”;
- (d) by the substitution for the definition of “comparative search” of the following definition:
- “**‘comparative search’** means the comparing [of fingerprints, body-prints or photographic images, taken under any power conferred by this Chapter,] by an authorised person of—
- (i) fingerprints, body-prints or photographic images, taken under any power conferred by this Chapter, against any database referred to in Chapter 5A of the South African Police Service Act; and
- (ii) forensic DNA profiles derived from bodily samples, taken under any power conferred by this Chapter, against forensic DNA profiles contained in the different indices of the NFDD referred to in Chapter 5A of the South African Police Service Act;”;
- (e) by the insertion after the definition of “comparative search” of the following definitions:
- “(fA) **‘crime scene sample’** means physical evidence which is retrieved from the crime scene or any other place where evidence of the crime may be found, and may include physical evidence collected from the body of a person;
- (fB) **‘DNA’** means deoxyribonucleic acid which is a bio-chemical molecule found in the cells and that makes each species unique;
- (fC) **‘forensic DNA analysis’** means the analysis of sections of the deoxyribonucleic acid of a bodily sample to determine the forensic DNA profile: Provided that this does not relate to any analysis pertaining to medical tests or for health purposes or mental characteristic of a person or to determine any physical information of the person other than the gender;
- (fD) **‘forensic DNA profile’** means the results obtained from forensic DNA analysis of bodily samples taken from a person or from a crime scene, providing a unique string of alpha numeric characters to provide identity reference: Provided that this does not contain any information on the health or medical condition or mental characteristic of a person or the predisposition or physical information of the person other than the gender;
- (fE) **‘intimate sample’** means a sample of blood or pubic hair or a sample taken from the genitals or anal orifice area from the body of a person, excluding a buccal sample;
- (fF) **‘NFDD’** means the National Forensic DNA Database of South Africa, established in terms of section 15G of the South African Police Service Act;
- (fG) **‘non-intimate sample’** means a buccal sample, a sample taken from a nail or from under the nail of a person;”;
- (f) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “Any police official who, in terms of this Act or any other law takes the fingerprints, a body-print or bodily sample or ascertains any bodily feature of a child must—”; and

(g) by the addition of the following subsections:

- “(3) An authorised person may take a bodily sample only—
- (a) with the consent of the person from whom it is to be taken;
  - (b) if authorised to do so by a warrant issued under subsection (4); or
  - (c) if authorised to do so under section 36D.
- (4) A warrant contemplated in subsection (3)(b) may be issued by a judge or a magistrate if it appears from written information given by the authorised person on oath or affirmation that there are reasonable grounds for believing that—
- (a) any person from whom a bodily sample is to be taken, has committed an offence referred to in Schedule 1 within the area of jurisdiction of that judge or magistrate; and
  - (b) the sample or the results of an examination thereof, will be of value in the investigation by excluding or including that person as a possible perpetrator of the offence.
- (5) Any authorised person who, in terms of this Chapter or in terms of any other law, takes a buccal sample from any person, must do so—
- (a) in a designated area deemed suitable for such purposes as determined by the Departmental Heads of Police, Justice and Constitutional Development or Correctional Services in their area of responsibility and subject to—
    - (i) subsection (2);
    - (ii) the requirements of any national instruction made by the National Commissioner of the South African Police Service, regulation made by the Minister of Police or instruction made by the Commissioner of Correctional Services; and
  - (b) subject to any legal requirements pertaining to the disposal of bio-medical waste.”.

#### Insertion of sections 36D and 36E in Act 51 of 1977

2. The following sections are hereby inserted in the Criminal Procedure Act, 1977, after section 36C:

#### “Powers in respect of buccal samples and bodily samples

- 36D.** (1) Subject to section 36A(5), an authorised person shall take a buccal sample or shall cause the taking of any other bodily sample by a registered medical practitioner or registered nurse of any—
- (a) person arrested for any offence referred to in Schedule 1;
  - (b) person released on bail in respect of any offence referred to in Schedule 1, if a buccal sample or a bodily sample of that person was not taken upon his or her arrest;
  - (c) person upon whom a summons has been served in respect of any offence referred to in Schedule 1;
  - (d) person whose name appears on the National Register for Sex Offenders; and
  - (e) person convicted by a court in respect of any offence which the Minister by notice in the *Gazette* has declared to be an offence for the purposes of this subsection,
- provided that bodily samples, with the exception of buccal samples, shall only be taken by a registered medical practitioner or registered nurse.
- (2) Subject to section 36A(5), an authorised person may take a buccal sample or may cause the taking of any other bodily sample by a registered medical practitioner or registered nurse of any—
- (a) person arrested in respect of any offence;
  - (b) person released on bail in respect of any offence, if a buccal sample or bodily sample was not taken upon his or her arrest;
  - (c) person upon whom a summons has been served in respect of any offence;
  - (d) person convicted by a court in respect of any offence which the Minister by notice in the *Gazette* has declared to be an offence for the purposes of this subsection,

provided that bodily samples, with the exception of buccal samples, shall only be taken by a registered medical practitioner or registered nurse.

(3) An authorised person must immediately furnish every bodily sample taken under subsection (1) or (2) to the authorised officer, who shall carry out a forensic DNA analysis on every such sample in terms of Chapter 5B of the South African Police Service Act.

(4) Subject to section 36A(5), nothing in this Chapter shall prohibit—

- (a) an authorised person from re-taking a buccal sample from any person referred to in subsection (1) or (2), if the buccal sample taken from him or her was either not suitable for DNA analysis or insufficient; or
- (b) a registered medical practitioner or registered nurse from re-taking a bodily sample taken from any person referred to in subsection (1) or (2), if the bodily sample taken from him or her was either not suitable for DNA analysis or insufficient.

(5) The forensic DNA profile derived from bodily samples, taken under any power conferred by this section, may be used to conduct a comparative search.

(6) (a) Subject to paragraph (b), any forensic DNA profile derived from such sample, taken under any power conferred by this section, shall only be used—

- (i) for purposes related to the detection of crime;
- (ii) for purposes related to the investigation of an offence;
- (iii) for purposes related to the conducting of a prosecution;
- (iv) in the identification of unidentified human remains; or
- (v) in the identification of missing persons.

(b) The forensic DNA profile derived from bodily samples, taken under any power conferred by this section, must be retained on or expunged from the NFDD in accordance with the provisions of Chapter 5B of the South African Police Service Act.

(c) Any person who uses or allows the use of a bodily sample or any forensic DNA profile derived from such sample for any purpose other than as contemplated in paragraph (a), is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 15 years.

(d) Intimate samples may only be taken by a registered medical practitioner or registered nurse.

(7) Subject to subsection (6)(a) and (d), the head of the Correctional Centre or Remand Detention Facility in which the person was or is incarcerated, or his or her delegate, must ensure that a buccal sample or a bodily sample is taken of any person who is serving a sentence of imprisonment for any offence on admission to a Correctional Centre or Remand Detention Facility or before the release of such person from the Correctional Centre or Remand Detention Facility, if it had not already been taken upon his or her arrest.

(8) The head of the Correctional Centre or Remand Detention Facility referred to in subsection (7) or his or her delegate must ensure that the authorised person is informed within seven days that a buccal sample or bodily sample was taken and ready for collection or is provided to the South African Police Service within 30 days.

### **Samples for investigation purposes**

**36E.** (1) Subject to section 36A(3) and (5), an authorised person may take a buccal sample of a person or a group of persons, if there are reasonable grounds to—

- (a) suspect that the person or one or more of the persons in that group has committed an offence referred to in Schedule 1; and
- (b) believe that the sample or the results of an examination thereof will be of value in the investigation by excluding or including one or more of those persons as possible perpetrators of the offence.

(2) The provisions of section 36D(5) and (6) apply with the necessary changes to a sample or DNA profiles derived therefrom as contemplated in subsection (1)."

**Amendment of section 37 of Act 51 of 1977, as amended by section 1 of Act 64 of 1982 and section 3 of Act 6 of 2010**

3. Section 37 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1)(c) for subparagraph (i) of the following subparagraph:

“(i) take **[a blood]** an intimate sample of any person; or”.

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**Amendment of section 212 of Act 51 of 1977, as amended by section 12 of Act 56 of 1979, sections 46 and 47 of Act 97 of 1986, section 11 of Act 5 of 1991, section 40 of Act 122 of 1991, section 9 of Act 86 of 1996, section 6 of Act 34 of 1998 and section 4 of Act 6 of 2010**

4. Section 212 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

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“In criminal proceedings in which the collection, receipt, custody, packing, marking, delivery or despatch of any fingerprint or body-print, article of clothing, specimen, tissue (as defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003), or any object of whatever nature is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges—”.

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**Amendment of section 225 of Act 51 of 1977, as amended by section 5 of Act 6 of 2010**

5. The following section is hereby substituted for section 225 of the Criminal Procedure Act, 1977:

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**“Evidence of prints, bodily samples or bodily appearance of accused**

**225.** (1) Whenever it is relevant at criminal proceedings to ascertain whether—

(a) any fingerprint **[or]**, body-print or bodily sample, as defined under Chapter 3, or the information derived from such prints or samples, of an accused at such proceedings corresponds to any other fingerprint **[or]**, body-print or bodily sample, or the information derived from such samples; or

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(b) **[whether]** the body of such an accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the fingerprints or body-prints of the accused or that the body of the accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, including evidence of the result of any **[blood]** test on a bodily sample, of the accused, shall be admissible at such proceedings.

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(2) Such evidence shall not be inadmissible by reason only thereof that the fingerprint **[or]**, body-print, or bodily sample as defined in Chapter 3, in question was not taken or that the mark, characteristic, feature, condition or appearance in question was not ascertained in accordance with the provisions of sections 36A, 36B, 36C, 36D, 36E or 37, or that it was taken or ascertained against the wish or the will of the accused concerned.”.

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**Insertion of Chapter 5B in Act 68 of 1995, as amended by Act 41 of 1997, Act 47 of 1997, Act 83 of 1998, Act 40 of 2002 and Act 6 of 2010**

6. The following Chapter is hereby inserted in the South African Police Service Act, 1995, after section 15D:

**“CHAPTER 5B**

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**ESTABLISHMENT, ADMINISTRATION AND MAINTENANCE OF  
NATIONAL FORENSIC DNA DATABASE OF SOUTH AFRICA**

**Interpretation**

**15E.** For the purposes of this Chapter, unless the context indicates otherwise—

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|--|----|
| (a) ‘ <b>authorised officer</b> ’ means the police officer commanding the Division responsible for forensic services within the Service or his or her delegate;  | 10 |
| (b) ‘ <b>authorised person</b> ’, with reference to buccal samples, means—   |    |
| (i) a police official or a member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), who is not a crime scene examiner and who has successfully completed the training prescribed by the Minister of Health under the National Health Act, 2003 (Act No. 61 of 2003), in respect of the taking of a buccal sample; and                        | 15 |
| (ii) any registered medical practitioner or registered nurse;  | 20 |
| (c) ‘ <b>bodily sample</b> ’ means any type of sample taken from a person, and includes intimate and non-intimate samples;   |    |
| (d) ‘ <b>buccal sample</b> ’ means a sample of cellular material taken from the inside of a person’s mouth;  | 25 |
| (e) ‘ <b>child</b> ’ means a person under the age of 18 years;   |    |
| (f) ‘ <b>crime scene samples</b> ’ means physical evidence which is retrieved from the crime scene or any other place where evidence of the crime may be found, and may include physical evidence collected from the body of a person;   | 30 |
| (g) ‘ <b>Criminal Procedure Act</b> ’ means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);   |    |
| (h) ‘ <b>DNA</b> ’ means deoxyribonucleic acid which is a bio-chemical molecule found in the cells and makes each species unique;  | 35 |
| (i) ‘ <b>Explosives Act</b> ’ means the Explosives Act, 2003 (Act No. 15 of 2003);   |    |
| (j) ‘ <b>Firearms Control Act</b> ’ means the Firearms Control Act, 2000 (Act No. 60 of 2000);   |    |
| (k) ‘ <b>forensic DNA analysis</b> ’ means the analysis of sections of the deoxyribonucleic acid of a bodily sample to determine the forensic DNA profile: Provided that it does not relate to any analysis pertaining to medical tests or for health purposes or mental characteristic of a person or to determine any physical information of the person other than the gender;  | 40 |
| (l) ‘ <b>forensic DNA profile</b> ’ means the results obtained from forensic DNA analysis on bodily samples taken from a person or a crime scene, providing a unique string of alpha numeric characters to provide identity reference: Provided that it does not contain any information on the health or medical condition or any information on the predisposition or physical information of that person other than the sex of that person. | 45 |
| (m) ‘ <b>intimate sample</b> ’ means a sample of blood or pubic hair or a sample taken from the genitals or anal orifice area from the body of a person, excluding a buccal sample;  | 50 |
| (n) ‘ <b>non-intimate sample</b> ’ means a buccal sample or a sample taken from a nail or from under the nail of a person;   | 55 |

- (o) **'NFDD'** means the National Forensic DNA Database of South Africa, established in terms of section 15G;
- (p) **'volunteer'** means a person who gives his or her informed consent to the taking of an intimate sample or a non-intimate sample in accordance with section 15K.

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### Purpose of Chapter

**15F.** The purpose of this Chapter is to establish and maintain a national forensic DNA Database in order to perform comparative searches to—

- (a) serve as a criminal investigative tool in the fight against crime;
- (b) where applicable, identify persons that might have been involved in the commission of offences, including those committed before the coming into operation of this Chapter;
- (c) where applicable, prove the innocence or guilt of accused persons; or
- (d) where applicable, assist with the identification of missing persons or unidentified human remains.

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### Establishment of forensic DNA Database

**15G.** (1) A national forensic DNA database within the Service, to be known as the National Forensic DNA Database of South Africa (NFDD), is hereby established.

(2) The NFDD shall be administered and maintained by the authorised officer.

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(3) The NFDD shall consist of the following indices which contain forensic DNA profiles:

- (a) A Crime Scene Index;
- (b) an Arrestee Index;
- (c) an Offenders Index;
- (d) a Volunteer Index; and
- (e) an Elimination Index.

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(4) Nothing in this Chapter shall affect the use of such forensic DNA profiles derived from samples taken in accordance with this Act for comparative searches against forensic DNA profiles derived prior to the coming into operation of this Act.

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(5) The indices shall not contain the following information derived from a bodily sample which was taken from a person:

- (a) The appearance of the person, other than indicating the sex;
- (b) medical information of the person;
- (c) historical information relating to the person; and
- (d) behavioural information of the person.

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(6) Bodily samples received from the date of the implementation of the Act shall be destroyed and disposed of within three months after a forensic DNA profile is obtained and loaded on the NFDD.

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(7) Forensic DNA profiles loaded after commencement of the Act shall be expunged in accordance with the requirements set out in section 15Q.

(8) The National Commissioner or his or her delegate shall ensure that an adequate system solution with hardware shall be implemented and maintained to ensure an effective NFDD.

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### Crime Scene Index

**15H.** The Crime Scene Index may contain forensic DNA profiles, derived by means of DNA analysis, from bodily samples that are found and collected, including at a crime scene—

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- (a) at any place where an offence was, or is reasonably suspected of having been, committed;
- (b) on or in the body of the victim or suspect which may be used to identify DNA left by that person who was in contact with that person during the commission of the offence; or
- (c) on anything worn or carried by the victim or suspect at the time when an offence was, or is reasonably suspected of having been, committed.

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**Arrestee Index**

**15I.** The Arrestee Index shall contain forensic DNA profiles, derived by means of forensic DNA analysis, from a bodily sample taken under any power conferred by—

- (a) Chapter 3 of the Criminal Procedure Act;
- (b) the Firearms Control Act; or
- (c) the Explosives Act,

where an arrestee's forensic DNA profile does not form part of the Offenders Index.

**Offenders Index**

**15J.** The Offenders Index shall contain forensic DNA profiles, derived by means of forensic DNA analysis, from a bodily sample—

- (a) taken under any power conferred by section 36D of the Criminal Procedure Act;
- (b) that was entered into the Arrestee Index, but an arrestee has subsequent to the entering of his or her forensic DNA profile on the Arrestee Index been convicted of an offence; or
- (c) that was taken from a person convicted of an offence either before or after the coming into operation of this Act.

**Volunteer Index**

**15K.** (1) (a) The Volunteer Index shall contain forensic DNA profiles, from a bodily sample taken from a person with his or her informed consent.

(b) If the volunteer is a child, a sample may only be taken for the purposes of paragraph (a) with the informed consent of the child's parent or guardian.

(c) Any authorised person referred to in paragraph (a) of the definition of "authorised person" who, in terms of this Chapter or in terms of any other law takes a buccal sample from any person, must do so in a designated area and subject to the requirements of any national instruction issued by the National Commissioner of the South African Police Service or instructions of the Commissioner of Correctional Services: Provided that the police official who takes a buccal sample may not be a crime scene examiner.

(2) For the purposes of this section, informed consent means that the volunteer consents, in writing, to the taking of a buccal sample, after a police official has informed him or her—

- (a) of the manner in which the buccal sample will be taken;
- (b) that the volunteer is under no obligation to give a buccal sample;
- (c) that the sample or the forensic DNA profile derived from it may produce evidence that might be used in a court of law; and
- (d) that the buccal sample taken under this section, and the forensic DNA profile derived from it, may only be used for purposes related to the detection of crime, the investigation of an offence, the conducting of a prosecution, the identification of unidentified human remains or the identification of missing persons.

**Elimination Index**

**15L.** (1) The Elimination Index shall contain forensic DNA profiles derived from a buccal sample from—

- (a) a police official, or any other person, who may due to the nature of his or her official duties in relation to the attendance and processing of a crime scene, be subjected for forensic examination in terms of this Chapter;
- (b) a police official or any other person, who may be handling or processing or examining crime scene samples or bodily samples under this Chapter, and to which this Chapter is applicable;
- (c) any person directly involved in the manufacturing of consumables, equipment, utensils or re-agents, or the servicing or calibration of

- equipment or in laboratories used in the forensic DNA analysis process; and
- (d) any person who, for whatever reason, enters a laboratory that performs forensic DNA examinations, or processes, handles or examines crime scene samples or bodily samples under this Chapter, and to which this Chapter applies. 5
- (2) Any authorised person who, in terms of this Chapter or in terms of any other law, takes a buccal sample from any person, must do so in a designated area and subject to the requirements of any national instruction issued by the National Commissioner: Provided that the police official who takes a buccal sample may not be a crime scene examiner. 10
- (3) Nothing in this section shall prohibit the re-taking of a buccal sample from any person mentioned under subsection (1).
- (4) Nothing in this section shall prohibit that the forensic DNA profile derived from a sample taken from any person, mentioned under subsection (1), be subjected to a comparative search for purposes related to the investigation of an offence. 15

### **Comparative forensic DNA search and communication of information**

- 15M.** (1) The authorised officer shall perform comparative searches on forensic DNA profiles that are entered onto the NFDD for purposes related to the detection of crime, the investigation of an offence, the conducting of a prosecution, identification of missing persons or the identification of unidentified human remains, and communicate the outcome of the comparative search as contemplated in subsection (3). 20
- (2) Whilst a forensic DNA profile is stored in the NFDD in accordance with the requirements of this Chapter, a comparative search may be performed and a report may be issued. 25
- (3) No person may disclose any information which he or she had obtained in the exercise of his or her powers or the performance of his or her duties in terms of this Act, except— 30
- (a) to a person who of necessity requires it for the performance of his or her functions in terms of this or any other Act or as provided for in section 15N;
- (b) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act or any other Act; 35
- (c) in respect of information which is required in terms of any law or as evidence in any court of law;
- (d) to any competent authority which requires it for the institution, or an investigation with a view to the institution of any criminal proceedings, including a preliminary investigation or an inquest; or 40
- (e) for criminal defence purposes, to an accused person, or where the accused is a child to his or her parent or guardian, or his or her legal representative.

### **Foreign and international law enforcement agencies**

- 15N.** (1) The authorised officer may, subject to the provisions of this Act and any other applicable law, upon receipt of a forensic DNA profile from a foreign state or a recognised international organisation, tribunal or entity, compare the forensic DNA profile with those in the NFDD, for the detection of crime, the investigation of an offence, the conducting of a prosecution, the identification of unidentified human remains or the identification of missing persons, and may then communicate the outcome of the comparative search to the requester. 45 50
- (2) The authorised officer may for purposes related to detection of crime, the investigation of an offence, the conducting of a prosecution, the identification of unidentified human remains identification or the identification of missing persons, communicate a forensic DNA profile contained in the Crime Scene Index to a foreign state or a recognised international organisation, tribunal or entity: Provided that the forensic DNA profile may only be provided subject to the international obligations of the Republic. 55

### Compliance with Quality Management System

- 15O.** (1) The authorised officer must develop and recommend standards for quality management, including standards for testing the proficiency of forensic science laboratories and forensic analysts conducting forensic DNA analysis. 5
- (2) The standards referred to in subsection (1) must—
- (a) specify criteria for quality management and proficiency tests to be applied to the various types of forensic DNA analysis; and
  - (b) include a system for grading proficiency testing performance to determine whether a laboratory or forensic analyst is performing acceptably. 10

### Retention, storage, destruction and disposal of crime and buccal samples

- 15P.** (1) Any bodily sample taken from a person and not relating to a crime scene sample or used to populate the NFDD with forensic DNA profiles shall be destroyed and disposed of within three months after a forensic DNA profile is obtained and loaded to the NFDD. 15
- (2) Bodily samples, excluding crime scene samples, received from the commencement of this Act shall be destroyed within three months after a forensic DNA profile is obtained and loaded to the NFDD. 20
- (3) The authorised officer must ensure the safe storage of crime scene samples.
- (4) Records of the destruction of bodily samples must be kept by the authorised officer in the prescribed manner.

### Retention, storage and expungement of forensic DNA profiles 25

- 15Q.** The forensic DNA profiles from persons, with the exception of crime scene samples, shall be stored on and expunged from the NFDD as follows:
- (a) The forensic DNA profile in the Arrestee Index must be expunged within three years after the authorised officer has been notified that— 30
    - (i) a decision was taken not to prosecute a person;
    - (ii) a person is acquitted at his or her trial;
    - (iii) a person's conviction is set aside on appeal or review;
    - (iv) a person is discharged at a preparatory examination;
    - (v) no criminal proceedings with regard to such forensic DNA profiles were instituted against the person concerned in any court; or 35
    - (vi) the prosecution has declined to prosecute.
  - (b) The victim's profile in the Volunteer Index shall be expunged within three months after the authorised officer is notified that the case is finalised. 40
  - (c) If a volunteer gives consent that his or her forensic DNA profile be retained on the database, it may be retained until such time that a request is made in terms of this Act that such profile be expunged, in which case the forensic DNA profile must be expunged within three months after receipt of such written request. 45
  - (d) The forensic DNA profiles from crime scene samples shall be stored indefinitely.
  - (e) The forensic DNA profiles in the Elimination Index shall be stored indefinitely. 50
  - (f) The relevant forensic DNA profile must, upon a conviction of a child be retained on a database referred to in Chapter 5B, subject to the provisions relating to expungement of a conviction or sentence of a child as provided for in section 87 of the Child Justice Act, 2008 (Act No. 75 of 2008). 55

## Infrastructure

**15R.** The National Commissioner or his or her delegate must develop and maintain adequate information technology infrastructure and systems to support the efficient analysis of DNA samples, performing comparative searches against the NFDD and the administrative maintenance of the NFDD. 5

## Offences and penalties

**15S.** Any person who, with regard to any intimate and non-intimate samples taken from persons, and forensic DNA profiles derived therefrom, referred to in this Chapter— 10

- (a) uses or who allows the use of those samples and forensic DNA profiles derived therefrom for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution; or 15
- (b) tampers with or manipulates the process or the samples or forensic DNA profiles; or
- (c) falsely claims such samples or forensic DNA profiles derived therefrom to have been taken from a specific person whilst knowing them to have been taken from another person or source, 20

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

## National instructions relating to collection, storage and use of forensic DNA evidence and destruction of DNA samples

**15T.** (1) The National Commissioner shall issue national instructions regarding all matters which are reasonably necessary or expedient to be provided for and which shall be followed by all police officials or members of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), who are tasked with the collection of bodily samples from a crime scene or the taking of a buccal sample, or persons performing forensic analysis on the bodily samples, or who are authorised under this Chapter to conduct a comparative search, in order to achieve the objects of this Chapter as set out in section 15F, including the following: 25

- (a) The manner in which to secure a crime scene for the purposes of collecting crime scene samples; 30
- (b) the manner in which to safely preserve and ensure timely transfer of collected samples to the forensic science laboratories;
- (c) the manner in which to request access to information stored on the NFDD; and 40
- (d) the manner in which DNA samples shall be destroyed.

(2) The national instructions contemplated in this section must be tabled in Parliament within six months after the commencement of this section.

(3) The National Commissioner or his or her delegate shall develop awareness programmes in respect of the national instructions referred to in subsection (1). 45

## Training

**15U.** The National Commissioner shall ensure that adequate training programs are developed in order to support the implementation and administration of the NFDD. 50

## Regulations

- 15V.** (1) The Minister may make regulations regarding—
- (a) any matter which is required or permitted by this Chapter to be prescribed; and
  - (b) any administrative or procedural matter necessary or expedient to give effect to the provisions of this Chapter.
- (2) A regulation made under subsection (1) may prescribe a fine or a period of imprisonment for any contravention thereof or failure to comply therewith.

## Parliamentary oversight 10

- 15W.** (1) The National Commissioner shall annually provide a report to the Minister in respect of the performance of the NFDD and the use of forensic DNA evidence in the investigation of crime, which report shall be tabled in Parliament.
- (2) The Minister shall not later than five years after the commencement of this section, submit a report to Parliament on whether any legislative amendments are required to improve the functioning of the NFDD and the use of forensic DNA evidence in the combating of crime.

## Access and security

- 15X.** (1) The National Commissioner must secure the integrity of information on the database provided for in this Chapter by taking appropriate, reasonable, technical and organisational measures to prevent—
- (a) loss of, damage to or unauthorised destruction of information on the database; and
  - (b) unlawful access to or processing of information on the database.
- (2) In order to give effect to subsection (1), the National Commissioner must take reasonable measures to—
- (a) identify all reasonable foreseeable internal and external risks to information on the database under his or her control;
  - (b) establish and maintain appropriate safeguards against the risks identified;
  - (c) regularly verify that the safeguards are effectively implemented; and
  - (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- (3) The National Commissioner must have due regard to generally accepted information security practices and procedures which may apply to the Service generally or be required in terms of specific laws and regulations relating to security of information applicable to the Service.
- (4) The National Commissioner, in liaison with the National Forensic Oversight Board, must, within six months of the commencement of this section, develop standard operating procedures regarding—
- (a) access to the databases; and
  - (b) the implementation of safety measures to protect the integrity of information contained on the relevant databases.

## Establishment and composition of National Forensic Oversight Board

- 15Y.** (1) A Board to be known as the National Forensic Oversight Board is hereby established.
- (2) The National Forensic Oversight Board consists of—
- (a) a representative from the Department of Health;
  - (b) the Secretary of Police or his or her representative;
  - (c) a representative from the Department of Home Affairs;
  - (d) a representative from the Department of Correctional Services;
  - (e) a representative from the Department of Justice and Constitutional Development; and

- (f) a total of two representatives appointed by relevant non-governmental organisations to collectively represent them, where in the opinion of the chairperson they can substantially contribute to the proceedings of the Board.
- (3) The National Forensic Oversight Board shall formally invite the South African Human Rights Commission to be part of the Board or to participate in the proceedings of the Board, subject to the willingness and approval of the South African Human Rights Commission.
- (4) The appointment of the members of the National Forensic Oversight Board shall be the responsibility of the Minister.
- (5) The Minister shall appoint the chairperson of the National Forensic Oversight Board.
- (6) The National Forensic Oversight Board shall—
- (a) monitor the implementation of legislation relating to sample collection, forensic DNA analysis and the NFDD;
  - (b) make proposals on the governance and integrity of the NFDD;
  - (c) monitor and make proposals on the conducting and performance of the forensic DNA analysis and the NFDD;
  - (d) monitor compliance with ethical and privacy issues;
  - (e) propose minimum quality standards to be implemented and maintained in performing forensic DNA analysis and operations of the NFDD;
  - (f) promote public accountability and transparency with respect to performing forensic DNA analysis and operations of the NFDD; and
  - (g) advise the Minister on reviewing legislation, regulations, policy and protocols concerning matters under this Chapter and Chapter 3 of the Criminal Procedure Act.
- (7) The National Forensic Oversight Board may determine their own constitution and governance.
- (8) The Board shall convene its first meeting within 90 days of the commencement of this Act.
- (9) The Chair of the National Forensic Oversight Board shall annually provide a report to the Minister relating to matters discussed and actions taken.
- (10) The proceedings of the National Forensic DNA Oversight Board shall be funded within the budget allocation of the Minister.
- (11) The Minister may, in consultation with the Minister of Finance, determine the remuneration or payment of expenses for members of the National Forensic Oversight Board, who are not appointed in terms of this Act, the Public Service Act or the Correctional Services Act.”.

**Amendment of section 1 of Act 60 of 2000, as amended by section 1 of Act 28 of 2006 and section 7 of Act 6 of 2010**

7. Section 1 of the Firearms Control Act, 2000, is hereby amended—

- (a) by the substitution for the definition of “authorised person” of the following definition:
- “ ‘authorised person’ [means], with reference to—
- (i) photographic images, fingerprints or body-prints, means any police official or a member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), in the performance of his or her official duties; and
  - (ii) buccal samples, means any police official or member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), who is not a crime scene examiner, but has successfully undergone the training prescribed by the Minister of Health under the National Health Act, 2003 (Act No. 61 of 2003), in respect of the taking of a buccal sample.”;

- (b) by the insertion after the definition of “authorised person” of the following definition:  
     “**‘bodily sample’** means any type of sample taken from a person, and includes intimate and non-intimate samples;”;
- (c) by the insertion after the definition of “body-prints” of the following definition: 5  
     “**‘buccal sample’** means a sample of cellular material taken from the inside of a person’s mouth;”;
- (d) by the substitution for the definition of “comparative search” of the following definition: 10  
     “**‘comparative search’** [means the comparing of], in the case of—  
     (i) body-prints, fingerprints or photographic images, means the comparing of fingerprints, body-prints or photographic images, taken under any power conferred by [section 113] this Chapter, by an authorised person against any database referred to in Chapter 5A of the South African Police Service Act; and 15  
     (ii) bodily samples, taken under any power conferred by this Chapter, means using the NFDD to compare the forensic DNA profiles derived from such bodily samples against the forensic DNA profiles in the different Indices of the NFDD referred to in Chapter 5A of the South African Police Service Act;”;
- (e) by the insertion after the definition of “comparative search” of the following definition:  
     “**‘crime scene samples’** mean physical evidence which are retrieved from the location in which a crime took place or where evidence of the crime may be found, and may include physical evidence collected from the body of a person;”;
- (f) by the insertion after the definition of “Designated Firearms Officer” of the following definitions: 30  
     “**‘DNA’** means deoxyribonucleic acid which is a bio-chemical molecule found in the cells and makes each species unique;  
     “**‘forensic DNA analysis’** means the analysis of sections of the deoxyribonucleic acid of a bodily sample to determine the forensic DNA profile: Provided that this does not relate to any analysis pertaining to medical tests or for health purposes or mental characteristic of a person or to determine any physical information other than gender;”;
- (g) by the insertion after the definition of “imitation firearm” of the following definition: 35  
     “**‘intimate sample’** means a sample of blood or pubic hair or a sample taken from the genitals or anal orifice area from the body of a person, excluding a buccal sample;”;
- (h) by the insertion after the definition of “National Commissioner” of the following definitions: 40  
     “**‘NFDD’** means the National Forensic DNA Database of South Africa, established in terms of section 15G of the South African Police Service Act; and  
     “**‘non-intimate sample’** means a buccal sample or a sample taken from a nail or from under the nail of a person;”.

**Amendment of section 113 of Act 60 of 2000, as amended by section 35 of Act 28 of 2006 and section 8 of Act 6 of 2010** 50

**8. Section 113 of the Firearms Control Act, 2000, is hereby amended—**

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 55  
     “**‘[Subject to subsection (3) any police official]** An authorised person may without a warrant take fingerprints or body-prints and, subject to subsections (3) and (3A), bodily samples of a person or a group of persons or may cause such prints or samples to be taken, if—”;
- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph: 60  
     “(b) may cause any prints or any bodily samples taken under any power conferred by this section, to be subjected to a comparative search.”;

- (c) by the substitution for subsection (3) of the following subsection:  
“(3) Subject to section 36A(3) and (5) of the Criminal Procedure Act, 1977, bodily samples to be taken from the body of a person, with the exception of buccal samples, may only be taken by a registered medical practitioner or registered nurse.”; 5
- (d) by the insertion after subsection (3) of the following subsection:  
“(3A) Any authorised person who, in terms of this Chapter, takes a buccal sample from any person, must do so subject to—  
 (a) section 36A(2), (3) and (5) of the Criminal Procedure Act, 1977;  
and  
 (b) the requirements of any National Instruction made by the National Commissioner of the South African Police Service, or regulation made by the Minister of Police,  
provided that the authorised person who takes a buccal sample may not be a crime scene examiner.”; 10 15
- (e) by the substitution for paragraph (b) of subsection (5) of the following paragraph:  
“(b) The fingerprints or body-prints or bodily samples which may be retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution.”; and 20
- (f) by the substitution for paragraph (d) of subsection (5) for the following paragraph:  
“(d) The fingerprints and body-prints referred to in paragraph (a)(i) and (ii), must be stored in the database maintained by the National Commissioner, as provided for in Chapter 5A of the South African Police Service Act, 1995 (Act No. 68 of 1995), and the results of forensic DNA profiles of bodily samples obtained through the application of this section must be stored in the database maintained by the National Commissioner, as provided for in Chapter 5B of the South African Police Service Act, 1995.”. 25 30

#### **Amendment of section 1 of Act 15 of 2003, as amended by section 9 of Act 6 of 2010**

- 9. Section 1 of the Explosives Act, 2003, is hereby amended—**
- (a) by the substitution for the definition of “authorised person” of the following definition: 35  
“‘authorised person’ [means], with reference to—  
 (i) photographic images, fingerprints or body-prints, means any police official or a member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), in the performance of his or her official duties; and 40  
 (ii) buccal samples, means any police official or member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), who is not a crime scene examiner, but has successfully undergone the training prescribed by the Minister of Health under the National Health Act, 2003 (Act No. 61 of 2003), in respect of the taking of a buccal sample;”; 45
- (b) by the insertion after the definition of “authorised person” of the following definition: 50  
“‘bodily sample’ means any type of sample taken from a person, and includes intimate and non-intimate samples;”;
- (c) by the insertion after the definition of “broker” of the following definition: 55  
“‘buccal sample’ means a sample of cellular material taken from the inside of a person’s mouth;”;
- (d) by the substitution for the definition of “comparative search” of the following definition:  
“‘comparative search’ [means the comparing of], in the case of—  
 (i) fingerprints, body-prints or photographic images, means the comparing of fingerprints, body-prints or photographic images, 60



- taken under any power conferred by [section 9] this Chapter, by an authorised person against any database referred to in Chapter 5A of the South African Police Service Act; and
- (ii) bodily samples, taken under any power conferred by this Chapter, means using the NFDD to compare the forensic DNA profiles derived from such bodily samples against the forensic DNA profiles in the different Indices of the NFDD referred to in Chapter 5B of the South African Police Service Act;”;
- (e) by the insertion after the definition of “Convention” of the following definition: 10  
“ ‘crime scene samples’ means physical evidence which are retrieved from the location in which a crime scene took place or where evidence of the crime may be found, and may include physical evidence collected from the body of a person;”;
- (f) by the insertion after the definition of “detonate” of the following definition: 15  
“ ‘DNA’ means deoxyribonucleic acid which is a chemical substance found in the cells and is used for coding of a species;”;
- (g) by the insertion after the definition of “fireworks” of the following definitions: 20  
“ ‘forensic DNA analysis’ means the analysis of sections of the deoxyribonucleic acid of a bodily sample to determine the forensic DNA profile: Provided that this does not relate to any analysis pertaining to medical tests or for health purposes or mental characteristic of a person or to determine any physical information excluding gender;  
‘intimate sample’ means a sample of blood or pubic hair or a sample taken from the genitals or anal orifice area from the body of a person, excluding a buccal sample;”; and 25
- (h) by the insertion after the definition of “Minister” of the following definitions: 30  
“ ‘NFDD’ means the National Forensic DNA Database of South Africa, established in terms of section 15G of the South African Police Service Act; and  
‘non-intimate sample’ means a buccal sample or a sample taken from a nail or from under the nail of a person;”.

#### Amendment of section 9 of Act 15 of 2003, as amended by section 10 of Act 6 of 2010

10. Section 9 of the Explosives Act, 2003, is hereby amended— 35
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40  
“[Subject to subsection (3), any police official] An authorised person may without a warrant take fingerprints, body-prints[,] or, subject to subsections (3) and (3A), bodily samples of a person or a group of persons or may cause any such prints or samples to be taken, if there are reasonable grounds to—”;
- (b) by the substitution for subsection (3) of the following subsection: 45  
“(3) Subject to section 36A(3) and (5) of the Criminal Procedure Act, 1977, bodily samples to be taken from the body of a person, with the exception of buccal samples, may only be taken by a registered medical practitioner or registered nurse.”;
- (c) by the insertion after subsection (3) of the following subsection: 50  
“(3A) Any authorised person who, in terms of this Chapter or in terms of any other law, takes a buccal sample from any person, must do so subject to—  
(a) section 36A(2), (3) and (5) of the Criminal Procedure Act, 1977; and  
(b) the requirements of any National Instruction made by the National Commissioner of the South African Police Service, or regulation made by the Minister of Police, 55  
provided that the police official who takes a buccal sample may not be a crime scene examiner.”;

- (d) by the substitution for subparagraphs (ii) and (iii) of subsection (5)(a) of the following subparagraphs:
- “(ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A or 5B of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act, 2008 (Act No. 75 of 2008); and
  - (iii) in a case where a decision was made not to prosecute a person, if the person is acquitted at his or her trial, or if his or her conviction is set aside on appeal or review or if he or she is discharged at a preparatory examination or if no criminal proceeding with reference to such fingerprints [or], body-prints or bodily samples was instituted against the person concerned in any court or if the prosecution declines to prosecute, such fingerprints or body-prints must be destroyed within 30 days and forensic DNA profiles derived from bodily samples, other than crime scene samples, must be destroyed within six months after the authorised officer referred to in Chapter 5A or 5B of the South African Police Service Act has been notified.”; and
- (e) by the insertion of paragraph (e) in subsection (5) of the following:
- “(e) The information derived from bodily samples referred to in paragraph (a), which shall include the forensic DNA profiles derived from such samples, must be stored on the NFDD in accordance with the provisions of Chapter 5B of the South African Police Service Act, 1995 (Act No. 68 of 1995), and details or the results of the comparative search of bodily samples must be kept on a database provided for in Chapter 5B of the said Act.”.

#### Short title and commencement

**11.** This Act is called the Criminal Law (Forensic Procedures) Amendment Act, 2013, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT BILL, 2013**

### **1. BACKGROUND AND PURPOSE**

- 1.1 Following recommendations made by the Office for Criminal Justice System Reform (OCJSR), recommendations pertaining to fingerprints as well as a forensic DNA database were included in the Criminal Law (Forensic Procedures) Amendment Bill, 2009.
- 1.2 The Portfolio Committee on Police (“the Committee”), when it considered the Criminal Law (Forensic Procedures) Amendment Bill, 2009, decided to deal only with the fingerprint aspects thereof and deal with aspects relating to DNA at a later stage in a separate Bill. The Committee thereafter embarked on a study visit to Canada and the United Kingdom in order to familiarise themselves with issues affecting the implementation of DNA legislation and how DNA is used in other jurisdictions in combating crime.
- 1.3 Following the visit, the Minister of Police finalised a policy on the Establishment and Administration of a National DNA database that was presented to the Committee. This policy formed the basis for the drafting of the current Criminal Law (Forensic Procedures) Amendment Bill, 2013 (“the Bill”).

### **2. PROVISIONS OF THE BILL**

- 2.1 **Clause 1** seeks to amend terminology and insert new definitions in Chapter 3 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), such as definitions for “bodily sample”, “buccal sample”, “DNA”, “forensic DNA analysis”, “forensic DNA profile” and “comparative search”. It also provides for the taking by a police official of a buccal sample, subject to training requirements set by the Minister of Health and subject to certain circumstances, in a designated area.
- 2.2.1 **Clause 2** inserts a new section 36D in the Criminal Procedure Act, 1977, which provides for the categories of offences in respect of which a buccal sample must be taken and may be taken if a person is arrested upon a charge, released on bail or summonsed in connection therewith. The clause also deals with the forwarding of samples to the Forensic Laboratory, the re-taking of samples, subjecting samples to a comparative search, a limitation upon the use of such samples or profiles derived from such samples, and the keeping and destruction of such samples. A crime is provided for the abuse of DNA samples or forensic profiles, punishable with a period not exceeding 15 years’ imprisonment. The taking of buccal samples of persons serving sentences of imprisonment in respect of Schedule 1 (of the Criminal Procedure Act, 1977) offences when the Act comes into operation, is provided for.
- 2.2.2 **Clause 2** further inserts section 36E in the Criminal Procedure Act, 1977, to provide for the taking of a buccal sample of a person or group of persons where it is required to exclude or include a person in the investigation of a crime and to subject the sample taken to forensic DNA analysis and a comparative search.
- 2.3 **Clause 3** amends section 37 of the Criminal Procedure Act, 1977, by providing that a police official may not take an intimate sample of a person.
- 2.4 **Clause 4** substitutes section 212(8) (a) of the Criminal Procedure Act, 1977, to provide for the collection of specimens.
- 2.5 **Clause 5** substitutes section 225(1) of the Criminal Procedure Act, 1977, to include bodily samples or DNA profiles.

- 2.6 **Clause 6** inserts a new Chapter 5B in the South African Police Service Act, 1995, in order to provide for the establishment, administration and maintenance of a National Forensic DNA database, consisting of a Crime Scene Index, Arrestee Index, Offenders Index, Volunteer Index and Elimination Index. It further provides for comparative forensic DNA searches and communication of information, compliance with the quality management system, the retention, storage and destruction of samples and forensic DNA profiles, offences and penalties, national instructions relating to collection, storage and use of forensic DNA evidence. The Chapter also provides for parliamentary oversight, regulates access to, and security of, the database and the establishment and composition of a National Forensic Oversight Board.
- 2.7 **Clauses 7 and 8** amend the Firearms Control Act, 2000 (Act No. 60 of 2000), in order to provide for and align certain definitions and to also provide for the taking of buccal samples by an authorised person and the taking of bodily samples by a registered medical practitioner or registered nurse.
- 2.8 **Clauses 9 and 10** amend the Explosives Act, 2003 (Act No. 15 of 2003) to provide for and align certain definitions and to also provide for the taking of buccal samples by an authorised person and the taking of bodily samples by a registered medical practitioner or registered nurse.
- 2.9 **Clause 11** deals with the short title and commencement of the Act.

### **3. DEPARTMENTS/BODIES/PERSONS CONSULTED**

- 3.1 The Bill was developed in consultation with the Department of Justice and Constitutional Development, the Department of Health, the Department of Correctional Services and the National Prosecuting Authority.
- 3.2 The Criminal Law (Forensic Procedures) Amendment Bill, 2009, which dealt with both fingerprints and DNA, was published for comment, and comments on that Bill were also invited from the public by Parliament. Thereafter, however, as indicated in paragraph 1.2 above, the Committee decided to deal only with the fingerprint aspects of that Bill and deal with aspects relating to DNA at a later stage in a separate Bill. Following the visit by the Committee to Canada and the United Kingdom, the Minister of Police finalised a policy on the Establishment and Administration of a National DNA database. On the present Bill there was consultation with the relevant the Government Departments, before submission to the Cabinet.

### **4. IMPLICATIONS FOR PROVINCES**

None.

### **5. FINANCIAL IMPLICATIONS FOR STATE**

- 5.1 The impact of the legislation, in respect of the implementation thereof, has been assessed and consulted with the relevant Departments. The costing of implementation has been conducted. The provision of DNA reference sample collection kits, the analysis thereof, destruction of the samples and infrastructure will cost approximately R160 million per annum.
- 5.2 The cost for training police officials to take DNA reference samples and the conducting of forensic awareness programmes to support the implementation will cost approximately R22 million. These costs are covered in terms of the CJS Budget Allocation. A comprehensive implementation plan had been drafted jointly with the relevant Government Departments.

## **6. COMMUNICATION IMPLICATIONS**

The implementation must be accompanied by a communication strategy and training for all roleplayers, including the public at large, in order to create an awareness amongst everyone as to the importance of DNA evidence and the need not to contaminate crime scenes.

## **7. PARLIAMENTARY PROCEDURE**

7.1 The State Law Advisers and the Department of Police are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in sections 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), does not require this Bill to be referred to the National House of Traditional Leaders, since it does not contain provisions pertaining to customary law or customs of traditional Communities.