

**A Note for the 13th Bills Committee meeting on the
Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999
to be held on 22 May 2000**

Overseas Legislation in the United States and Sweden

PURPOSE

The purpose of this paper is to provide Members with information on the overseas legislation in respect of sample taking in the United States and Sweden.

DETAILS

2 At the earlier Bills Committee meetings, a paper titled "*Comparison between the Bill and Overseas Legislation*" has been presented to the Bills Committee by the Administration. During the ensuing discussions, Members expressed interests in the relevant legislation governing the taking of samples in the United States and the Scandinavian countries. As the laws of the US states differ, Members advised that information on some states, say, New York and California, might suffice.

3. The following information regarding the United States and Sweden have been sought –

(a) United States - Responses from the FBI Laboratory Division and the State DNA Database Statutes in California and New York (the unedited information is at Annex A); and

- (b) Sweden – Responses from the Ministry of Justice, Sweden and the relevant legislation (the unedited information is at Annex B). Members may wish to note that the relevant legislation in Sweden governing the establishment of the DNA database, which is a separate legislation from the one regulating the taking of samples, is not available in English. This has made detailed scrutiny of the legislation impracticable.

4. For the ease of Members' reference, the above information is summarised in the table in Annex C. According to the US FBI's advice, in the absence of voluntary consent, a search warrant, court order or a Grand Jury directive is required to obtain DNA samples from blood, hair and saliva. Blood sample must be drawn by a licensed medical technician, while saliva can be done via a buccal swab by a law enforcement officer. Having said the above, Members may wish to know that the above requirements vary from state to state but FBI advised that a majority of the law enforcement community on the US observe these requirements.

ADVICE SOUGHT

5. Members are invited to note the content of the paper.

Security Bureau
19 May 2000

**Comparison between the Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999
with relevant Overseas Legislation**

	<u>Hong Kong</u> <i>Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999</i>	<u>USA - California</u> <i>DNA and Forensic Identification Data Base and Data Bank Act of 1998</i>	<u>USA – New York</u> <i>McKinney's Consolidated Laws of New York Annotated Executive Law Article 49-B (amended 1999)</i>	<u>Sweden</u> <i>The Swedish Code of Judicial Procedure Chapter 28 – Search of premises, body search and body examination</i>
<i>Intimate Samples</i>	<ul style="list-style-type: none"> • Blood, semen or any other tissue fluid • urine, or pubic hair, a dental impression • a swab taken from person's body orifice other than the mouth or from a private part of a person's body <i>(s.10E of ICACO¹,s.3 of PFO²)</i> 	<ul style="list-style-type: none"> • There is no delineation of intimate and non-intimate sample • The Act allows the taking of two specimens of blood, a saliva sample, and right thumb and full palm print impressions. 	<ul style="list-style-type: none"> • There is no delineation of intimate and non-intimate sample • The Act allows the taking of sample appropriate for DNA testing 	<ul style="list-style-type: none"> • There is no delineation of intimate and non-intimate sample • The Code provides for body examination • "body examination" means the examination exterior or interior of the human body and also the taking of samples from the human body and examination of such samples. A body examination may not be conducted in such a way to put the person's future health at risk or to cause injury
<i>Non-intimate Samples</i>	<ul style="list-style-type: none"> • hair other than pubic hair • a sample taken from a nail or from under a nail • a swab taken from any part other than a private part of a person's body including mouth but not any other body orifice • saliva 	<ul style="list-style-type: none"> • There is no delineation of intimate and non-intimate sample • The Act allows the taking of two specimens of blood, a saliva sample, and right thumb and full palm print impressions. 	<ul style="list-style-type: none"> • There is no delineation of intimate and non-intimate sample • The Act allows the taking of sample appropriate for DNA testing 	<ul style="list-style-type: none"> • There is no delineation of intimate and non-intimate sample • The Code provides for body examination • "body examination" means the examination exterior or interior of the human body and also the taking of samples from the human body and examination of such samples. A body

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	<ul style="list-style-type: none"> an impression of any part of a person's body other than the identifying particulars described in section 59(6) of the Police Force Ordinance (those identifying particulars are fingerprints, palm-prints, sole-prints and toe-prints) <i>(s.10E of ICACO, s.3 of PFO)</i> 			examination may not be conducted in such a way to put the person's future health at risk or to cause injury
<i>Offences for which DNA profiles can be taken</i>	<ul style="list-style-type: none"> all serious arrestable offences, namely an offence for which a person may be sentenced to imprisonment for a term not less than 5 years <i>(s.54AA(2) & (8) of DDO³, s.10E(2) & (8) of ICACO, s.3, s.59A(2), 59C(2), 59E(1) of PFO)</i> 	<ul style="list-style-type: none"> specific offences are listed in the Act as "qualifying offences". They mainly include sexual and violence offences. 	<ul style="list-style-type: none"> specific offences are listed in the Act as "qualifying offences". They mainly include sexual and violence offences. 	<ul style="list-style-type: none"> a person reasonably suspected of an offence for which imprisonment may be imposed may be subjected to a body examination
<i>Legal provision to establish DNA Database</i>	<ul style="list-style-type: none"> Yes (s.59G(1)) to be maintained by the Government Chemist on behalf of the Commissioner of Police 	<ul style="list-style-type: none"> Yes to be maintained by the Sex Registration Unit of the Department of Justice, separate from the State summary criminal history information 	<ul style="list-style-type: none"> Yes the Division of Criminal Justice Services (DNA Identification Index) is authorised to establish a computerised State DNA identification index 	<ul style="list-style-type: none"> Another piece of legislation, "<i>Polisdatalagen SFS 1998:622</i>"⁴, concerning registers of the Police include provisions for the establishment of databases for DNA samples

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<i>Authority to take a body sample</i>	<ul style="list-style-type: none"> ● <i>non-intimate sample with no consent</i>: Superintendent of Police/Senior Commission Against Corruption Officer ● <i>intimate sample</i>: magistrate but consent still required (s.10E(1) of ICACO, s.59C(1), 59E(1) of PFO) 	<ul style="list-style-type: none"> ● the Act specifies that offenders of qualifying offences are obligated to provide DNA sample ● if a specimen or sample taken is not usable, the person concerned shall submit to the collection of additional specimens/ samples ● any person who refuses to provide the required sample and has received notice of such obligation is guilty of a misdemeanor and is punishable as a separate offence by both a fine of US\$500 and imprisonment of up to 1 year. 	<ul style="list-style-type: none"> ● designated offenders are obligated to provide a sample under the Act 	<ul style="list-style-type: none"> ● orders authorising a body examination are issued by the investigation leader, the prosecutor or the court. ● If delay entails risk, a body examination may be decided by a police officer.

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<i>Who may take samples</i>	<ul style="list-style-type: none"> ● <i>intimate (other than dental or urine):</i> registered medical practitioner (s.59A(6) of PFO) ● <i>intimate (dental):</i> registered dentist (s.59A(6) of PFO) ● <i>intimate (urine):</i> police/C&E officer of the same sex as the person (s.54AA(7) of DDO, s.59A(6) of PFO) ● <i>non-intimate:</i> registered medical practitioner, police officer or public officers working in the Government Laboratory who has received training for that purpose (s.10E(6) of ICACO, s.59C(6) of PFO) 	<ul style="list-style-type: none"> ● the Department of Corrections or other law enforcement agency 	<ul style="list-style-type: none"> ● any authorised forensic DNA laboratory 	<ul style="list-style-type: none"> ● only a physician or an accredited nurse may draw a blood sample ● only a physician may perform a more extensive examination

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<i>Destruction of samples</i>	<ul style="list-style-type: none"> ● <i>destroy after 12 months (or longer if period extended): if person not charged with any offence</i> ● <i>destroy as soon as practicable:</i> <ul style="list-style-type: none"> ➤ <i>when a person is charged but all charges are withdrawn; or</i> ➤ <i>when a person is discharged by court before conviction on ALL offences; or acquitted of all offences at trial or on appeal, or</i> ➤ <i>if a person is convicted, after the conclusion of all proceedings, or</i> ➤ <i>after DNA information has been obtained from non-intimate sample taken pursuant to s.59E or 59F, or</i> ➤ <i>when a person under s.59F(5) withdraw his authorisation and the sample has not been analysed</i> <p><i>(s.59H of PFO)</i></p>	<ul style="list-style-type: none"> ● <i>upon court order, the Department of Justice shall destroy any sample unless the Department determines that the person has otherwise become obligated to provide a specimen as a result of a separate conviction.</i> 	<ul style="list-style-type: none"> ● <i>The Division of Criminal Justice Services shall, by regulation, prescribe procedures to ensure that the record, analyses and sample are returned to the subject when the DNA record are expunged from the index.</i> 	<ul style="list-style-type: none"> ● <i>According the Swedish Ministry of Justice, samples must be destroyed when the investigation is closed</i>

	<p align="center"><u>Hong Kong</u></p> <p align="center"><i>Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999</i></p>	<p align="center"><u>USA - California</u></p> <p align="center"><i>DNA and Forensic Identification Data Base and Data Bank Act of 1998</i></p>	<p align="center"><u>USA – New York</u></p> <p align="center"><i>McKinney's Consolidated Laws of New York Annotated Executive Law Article 49-B (amended 1999)</i></p>	<p align="center"><u>Sweden</u></p> <p align="center"><i>The Swedish Code of Judicial Procedure Chapter 28 – Search of premises, body search and body examination</i></p>
<p><i>Destruction of forensic examination results from samples taken from suspects</i></p>	<ul style="list-style-type: none"> ● <i>destroy after 12 months (or longer if period extended): if person not charged with any offence</i> ● <i>destroy as soon as practicable:</i> <ul style="list-style-type: none"> ➤ <i>when a person is charged but all charges are withdrawn; or</i> ➤ <i>when a person is discharged by court before conviction on ALL offences; or acquitted of all offences at trial or on appeal, or</i> ➤ <i>when a person under s.59F(5) withdraw his authorisation</i> <p><i>(s.59H of PFO)</i></p>	<ul style="list-style-type: none"> ● <i>DNA profile has been included in the databank shall be expunged upon court order when</i> <ul style="list-style-type: none"> ➤ <i>the conviction or disposition has been reversed and the case dismissed</i> ➤ <i>the defendant has been acquitted of the offence</i> 	<ul style="list-style-type: none"> ● <i>DNA record shall be expunged from the index upon receipt of a notification of a reversal of conviction or of the granting of a pardon by the Division of Criminal Justice Services</i> 	<ul style="list-style-type: none"> ● <i>According the Swedish Ministry of Justice, forensic examination results must be destroyed when the investigation is closed</i>

	<p style="text-align: center;"><u>Hong Kong</u></p> <p style="text-align: center;"><i>Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999</i></p>	<p style="text-align: center;"><u>USA - California</u></p> <p style="text-align: center;"><i>DNA and Forensic Identification Data Base and Data Bank Act of 1998</i></p>	<p style="text-align: center;"><u>USA – New York</u></p> <p style="text-align: center;"><i>McKinney's Consolidated Laws of New York Annotated Executive Law Article 49-B (amended 1999)</i></p>	<p style="text-align: center;"><u>Sweden</u></p> <p style="text-align: center;"><i>The Swedish Code of Judicial Procedure Chapter 28 – Search of premises, body search and body examination</i></p>
<p><i>Use of forensic examination results</i></p>	<ul style="list-style-type: none"> ● for the purposes of forensic comparison and interpretation in the course of an investigation of any offence or in any proceedings for any such offence ● in case the results are of forensic DNA analysis, they can be used for purposes of s.59G(1) and (2) of PFO <p style="text-align: center;"><i>(s.59D of PFO)</i></p>	<ul style="list-style-type: none"> ● DNA and other forensic information shall be released only to law enforcement agencies for identification purposes 	<ul style="list-style-type: none"> ● DNA records shall be release for the following purposes – <ul style="list-style-type: none"> ➤ to law enforcement agencies for law enforcement identification purposes in the connection with the investigation of the commission of one or more crimes, to assist in the recovery or identification of the specified human remains ➤ for criminal defense purposes ● for creating or maintaining a population statistics database or for identification research and protocol development for forensic DNA analysis or quality control purposes if personally identifiable information is removed 	<ul style="list-style-type: none"> ● According the Swedish Ministry of Justice, the forensic results are mainly to facilitate the identification of persons in connection with investigations of crimes

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<i>Access to DNA database</i>	<ul style="list-style-type: none"> ● <i>access is allowed for the purposes of:</i> <ul style="list-style-type: none"> ➤ forensic comparisons for investigation purposes ➤ producing evidence for proceedings on offences ➤ providing the information to the person to whom it relates ➤ administering the database <p><i>(s.59G(2) of PFO)</i></p>	<ul style="list-style-type: none"> ● DNA and other forensic information shall be released only to law enforcement agencies for identification purposes ● the information shall be available to defense counsel upon court order ● statistical or research information can be disseminated provided the subject cannot be identified 	<ul style="list-style-type: none"> ● DNA records shall be release for the following purposes – <ul style="list-style-type: none"> ➤ to law enforcement agencies for law enforcement identification purposes in the connection with the investigation of the commission of one or more crimes, to assist in the recovery or identification of the specified human remains ➤ for criminal defense purposes ➤ for creating or maintaining a population statistics database or for identification research and protocol development for forensic DNA analysis or quality control purposes if personally identifiable information is removed 	<ul style="list-style-type: none"> ● information in a DNA database concerning individuals is subject to secrecy. ● According to the Swedish Law on Secrecy, such information is subject to secrecy if it is not obvious that the information can be exposed/revealed without damage to the individual or people close to him

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<i>Offences and penalties for unlawful access or improper use of the data on the database</i>	<ul style="list-style-type: none"> offence punishable by fine at level 4 and imprisonment for 6 months <i>(s.59G(3) of PFO)</i> 	<ul style="list-style-type: none"> intentional unauthorised disclosure of DNA or other forensic identification information is punishable as a misdemeanor 	<ul style="list-style-type: none"> intentional unauthorised disclosure is punishable as a felony. 	<ul style="list-style-type: none"> the Swedish Penal Code Chapter 4 provides that a person who unlawfully obtains access to a record, or unlawfully alters or erases or inserts such a record in a register, shall be sentenced for breach of data secrecy to a fine or imprisonment for at most two years.

Note: ¹ ICACO refers to "*Independent Commission Against Corruption Ordinance*"

² PFO refers to "*Police Force Ordinance*"

³ DDO refers to "*Dangerous Drugs Ordinance*"

⁴ The Swedish Legislation "*Polisdatlagen SFS 1998:622*" provided by the Ministry of Justice, Sweden, is not available in English. Detailed examination of the legislation is therefore not possible.

Annex A

April 21, 2000

LABORATORY RESPONSES TO QUESTIONS FROM HONG KONG POLICE REGARDING DNA STATUTES

- 1) The full title of the Legislation under which samples may be taken.

There currently is no Federal legislation under which samples may be taken. Each State has passed its own legislation which prescribes the criminal violations for which samples may be taken in that State.

Question 2-4 Refer to Attachment A - Glossary of Terms

Although, we do not have a definition for intimate sample and non-intimate sample, we can provide you with a definition of intrusive and non-intrusive. **Please note that the British courts have ruled that the taking of saliva as a sample is non-intimate.**

Intrusive - Example: Taking blood, semen, saliva and other body fluid samples from an individual

Non-Intrusive - Example: A fingerprint sample

- 2) Definition of Intimate Sample.
- 3) Definition of Non-intimate Sample.
- 4) Any other definitions used (intrusive, non-intrusive, etc.).

Questions 5-14 Refer to Attachment B - State DNA Database Statutes

- 5) Offences/criteria for which DNA profiles/samples may be taken.
- 6) Any legal provision to establish a database? Title of Legislation, if yes.
- 7) Authority to take a DNA sample.
- 8) Who may take sample?
- 9) Destruction of Samples.
- 10) Destruction of the forensic examination results of samples taken from suspects.
- 11) How [sic] (What) can the Forensic examination results be used for?
- 12) What details may be stored on the database in addition to the DNA profile?

13) Restriction on access to the DNA database

14) Offences and penalties for unlawful access to, or improper use of the data on the database.

ATTACHMENT A

GLOSSARY OF TERMS

Allele In classical genetics, one of the alternative forms of a gene at a particular locus. For example, the alleles for eye color include blue, green, and brown. In DNA analysis, the term alleles is commonly extended to include DNA fragments of a variable length and sequence that can be detected using DNA analysis techniques such as RFLP and PCR.

Allele Frequency How often an allele occurs in a given population. The CODIS Popstats data files show allele frequencies in the column labeled “Fraction”. The allele frequency is determined by using the following formula: $\text{Bin count} \div \text{Total count}$ (Popstats does not perform this calculation, the allele frequency is given in the statistical data file).

Amplification Increasing the number of copies of a specific segment within a DNA chain. “Building” DNA. PCR DNA analysis uses this technique to amplify specimens that are too small to use for the RFLP method.

Autorad A photographic recording that is produced on a piece of X-ray film using radioactive particles. The position where a radioactive decay of isotopes has occurred will show up as a black bar on the final autorad. An autorad is used to assist in determining if there is a correlation between known and unknown samples as well as to keep a permanent record in CODIS. CODIS uses autorads to more accurately determine the molecular weight of DNA profiles for searching purposes.

Autosearcher A software application that is part of the CODIS program suite. At the local level, Autosearcher allows users to search local indexes (casework, offender, and population) against other local indexes. At the state level, Autosearcher allows users to search the data from the local lab against the data from the other local labs within the state. At the national level, Autosearcher allows users to search for the data from one state against the data from other states.

Band

A visual image representing a particular DNA fragment on an autorad. Each band

represents a different molecular weight. The numerical values of these fragment lengths are stored in CODIS. An individual's DNA profile usually consists of two bands (heterozygote). Note: In CODIS the terms band and allele are sometimes used interchangeably.

Band Shift The phenomenon in which DNA fragments in one lane of a gel migrate at a different rate from that of identical fragments in other lanes of the same gel.

Base Pair (bp) Two bases -- adenine and thymine or guanine and cytosine -- held together by weak bonds. A base is just one of the subunits that make up DNA. The two strands of DNA are held together in the shape of a double helix by the bonds between base pairs. In CODIS molecular weights are expressed in terms of base pairs. For example, the molecular weight of a specimen at a specific locus may be expressed as band 1 = 5020 bp + band 2 = 3037 bp.

Batch Processing Processing several search requests simultaneously instead of only searching for a single-target profile. See single-target search.

Benchmark Match A Benchmark Match is like a Conviction Match, except it applies only to the Forensic index. Benchmark Matches occur when profiles from several cases linked external to CODIS (i.e., the examiner links the cases by matching DNA profiles on the workbench) are also matched subsequently by CODIS.

Bin Used for population statistic calculations. Because individual alleles are too similar to differentiate, they are grouped into sets of similar sizes called bins. There are two ways of binning data: fixed bins and floating bins. The example below shows how RFLP data is binned according to molecular weight. For example, bin 1 represents molecular weight range 0 -- 787 bp.

Blind External Proficiency Test A test that is presented to a forensic laboratory through a second agency and appears to the analysts to involve routine evidence.

Candidate Match A possible match between two or more DNA profiles discovered by CODIS software (AutoSearcher, Searcher, or Batch Search). Candidate Matches must be confirmed or refuted by qualified DNA analysts. If profiles from multiple laboratories are included in a Candidate Match, a qualified DNA analyst from each laboratory must participate in the confirmation process.

The Searcher family of programs is capable of generating many candidate matches, depending on the configuration of stringency, match window, equivalent alleles, number of missing loci, etc.

Casework Index See Forensic Index

Casework Laboratory The forensic DNA laboratory responsible for a DNA profile developed from crime scene evidence.

Ceiling Principle A procedure in the calculation of population statistics that sets a minimum profile frequency.

Chromosome A structure in the nucleus of a cell that is made up of proteins, DNA, and RNA. There are 46 total chromosomes within the nucleus of human body cells (23 from the mother and 23 from the father). Genes are arranged in linear order along the chromosomes. Human sex cells contain 23 chromosomes.

CODIS Combined DNA Index System. CODIS refers to the entire system of DNA indexes (convicted offender index, close biological relatives index, population file, forensic index, unidentified persons index, missing persons index and victim index) maintained at the National, State, and local levels.

CODIS Comparisons Comparisons of one DNA record to another for the purpose of establishing an association between two specimens.

Cold Match A Cold Match occurs when CODIS matches two DNA profiles with no prior indication that the profiles are related. One profile may be in the Offender Index and the other in the Forensic Index, or both profiles may be in the Forensic Index. Cold Matches must be confirmed by qualified DNA analysts.

Conservative Favoring the defendant. A conservative estimate is deliberately chosen to be more favorable to the defendant than the best unbiased estimate would be.

Contract Laboratory A laboratory, usually in the private sector, performing DNA analyses under contract to an NDIS participating laboratory.

Control A known DNA profile used to maintain the integrity of any DNA analysis. The control is taken through the same process as other samples and should yield expected results. If the result obtained from the control is unexpected or inaccurate, it indicates that the entire autorad is potentially unreliable. The national control is K562.

Convicted Offenders Persons who have been convicted of crimes in Federal, State, and/or local courts where the applicable law permits establishment of a DNA record for the convicted person.

Convicted Offender Index The CODIS computer index (or file) that contains DNA identification records resulting from the DNA profiling of convicted offenders.

Convicted Offender Laboratory The forensic DNA laboratory responsible for a DNA profile developed from a sample provided by a known convicted offender.

Convicted Offender Sample A biological sample containing DNA that is collected from

a convicted offender for the purpose of DNA profiling. These DNA profiles are used to establish an index of DNA identification records that can then be searched for matches against the DNA derived from a crime scene DNA profile.

Conviction Match A Conviction Match occurs when CODIS matches a DNA profile developed from crime scene evidence to a DNA profile from a convicted offender, but the crime from which the evidence was collected has already been solved and linked with the offender.

For *intrastate* matches, a Conviction Match is usually caused by the convicted offender's DNA profile matching against the evidence used to convict him/her.

For *interstate* matches, a Conviction Match usually indicates that the perpetrator has been convicted of a different crime in another State. This is not an Offender Hit, because the information is most likely already captured in the States' criminal history record system.

In some instances, a Conviction Match can be determined directly from reviewing the Candidate Match; the Pending and Wait for More Loci steps can be skipped. In a sense, Conviction Matches are a form of blind external testing --the offender ought to match the evidence for which s/he was convicted.

Criminal Justice Agency A criminal justice agency is an agency or institution of the federal, state, or local government, other than the office of the public defender, which performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.

Degradation DNA that has partially or completely deteriorated by chemical or physical means.

Denaturation Separation of a double stranded DNA into single strands.

DNA Deoxyribonucleic acid. This is the material that encodes genetic information. It is a double stranded chain of nucleotides held together by weak bonds between base pairs. Base pairs form only between adenine (A) and thymine (T) and between guanine (G) and cytosine (C). This formation allows DNA analysts to deduce the formation of one strand if they know the sequence of its complement strand.

DNA Comm Internal CODIS electronic mail message system.

DNA Advisory Board (DAB) A board on DNA quality assurance methods appointed by the FBI Director in accordance with the DNA Identification Act of 1994.

DNA Analysis The process of determining an individual's unique DNA profile. Currently, DNA analysis is concentrating on the RFLP and PCR techniques, but new methods of analysis may be developed in the future. Once a unique DNA profile is established, CODIS can use the information to establish investigative leads.

DNA Extraction Forensic techniques used to chemically extract the DNA from objects such as blood, blood stains, semen, semen stains, tissue, bone, hair roots, saliva stains, or urine.

DNA Identification Act DNA Identification Act of 1994; 42 U.S.C. § 14132.

DNA Profile A collection of readings for a given specimen. Only one reading per locus is uploaded to LDIS, SDIS, and NDIS, but many may exist in LDAS.

DNA Record The DNA record includes the DNA profile as well as data required to manage and operate NDIS, i.e., the NDIS Agency identifier which serves to identify the submitting agency; the NDIS Specimen Identification Number; information related to the reliability and maintainability of the DNA profiles; and names of the participating laboratories and DNA personnel associated with the DNA profile analyses.

Electrophoresis A method of separating large molecules (such as DNA fragments) from a mixture of smaller molecules. For DNA analysis, an electric current is applied to a gel that contains the DNA fragments which causes the DNA fragments to move through the gel at different rates. When electricity is removed, the fragments are left sorted by length.

Enzyme A protein that acts as a catalyst to take apart or put together molecules. Each enzyme is responsible for one specific action. The enzyme increases the speed at which an event occurs, but does not alter the course of the biochemical reaction.

FBI Federal Bureau of Investigation.

Filter A set of criteria that each DNA profile must meet in order to be accepted into a specific database. Each database level^{3/43/4} local, state, and national^{3/43/4} controls their own set of configurable filters that filter data that is uploaded to them.

Forensic Hit A Forensic Hit (FH) occurs when two or more forensic samples are linked at LDIS, SDIS, or NDIS. Forensic Hits are sometimes called case-to-case hits. Cold and warm hits are counted as Forensic Hits.

Forensic Index The CODIS index (or file) that contains the DNA results or profile from the analysis of evidence. The DNA records contained in this index originate from forensic samples.

Forensic Sample A biological sample that is found at the scene of a crime. DNA analysis is conducted to establish an association between the crime scene and an individual, normally a perpetrator.

Frequency How often an event or instance occurs within pre-defined parameters. See Allele Frequency.**Gel** A substance that holds DNA fragments until they are subjected to electrophoresis and eventual transfer to a nylon membrane for autorad creation. The gel helps analysts sort the multiple DNA fragments by length by providing a medium for the fragments to migrate through. **GDIS** Generalized DNA Index System. GDIS refers to the software and database used for SDIS and NDIS.

Gel type A gel attribute that indicates in CODIS if the gel is used for casework, DNA proficiency, DNA research, missing persons, offender, training, other, population, or criminal maternity/paternity cases. **Gene** The physical and functional unit of heredity. It is a specific sequence of nucleotides located in a specific position on a chromosome. An element of DNA that determines an individual hereditary trait. For each locus, you inherit a single allele from each parent. So every individual has two alleles for each gene type.**Genome** The total genetic makeup of an organism. In a human, this comprises 3 billion base pairs.**Genotype** The total genetic constitution that an individual receives from his or her parents (what alleles the individual has), as distinguished from its physical appearance (phenotype). It is usually designated by allele symbols (e.g., A1A2 designates the genotype of an individual with alleles A1 and A2).**Genetic code** The sequence of nucleotides that is used to determine an individual's unique DNA profile. The code is expressed by the unique arrangement of the 4 nucleotides. An individual's genetic code is derived from the multiple repeats of letter sequences that intervene between the protein coding regions of DNA.**Heterozygote** A fertilized egg (zygote) with two different alleles at a designated locus. An individual organism that has different alleles of a particular gene on each member of a pair of chromosomes. An organism is heterozygous to a given gene if its two alleles are different.

Homozygote A fertilized egg with two identical alleles at a designated locus. An individual organism having identical alleles of a particular gene on each member of a pair of chromosomes. An organism is homozygous to a given gene if its two alleles are the same.**Human DNA Control** A specimen from a single human source analyzed concurrently with other DNA specimens. The patterns derived from the human DNA control are compared at local, State, and national CODIS levels with expected patterns to evaluate the acceptability of the results for inclusion in the CODIS files.

Hybridization The process of complementary base pairing between two single strands of DNA. This occurs during DNA analysis when a probe finds its complementary strand of DNA. **IAW** Image Analysis Workstation. Workstation that provides a means to digitize and size an autorad.**Index** An identifier attached to a specific data type used in CODIS to speed the search for matching information. A target DNA profile searches against CODIS indexes to locate other matching profiles.**Isotope** An alternative form of a chemical element; used particularly in reference to radioactive forms or radioisotopes.**K562**The national control used in DNA analysis. This control must be included on the autorad and the base pair reading for the control must fall within the acceptable K562 values in order for it to be uploaded to the local, state, or national databases. The control is usually entered in lane 2 of the autorad.**Keyboard Search** A manual search of NDIS initiated by the NDIS Custodian.

Known sample (K1) This is a sample that the analyst can positively associate with a person. For example, a known sample could be a vial of blood obtained from the victim. Known samples are used to help differentiate between the victim and suspect bands of a mixed or unknown sample.

Ladder A series of bands that are displayed vertically on an autorad and on a gel to help lay out samples to determine their molecular weight. It is a reference used to measure sample and control bands. Each band on the ladder represents a specific molecular weight. When the alleles are compared against a ladder, their specific molecular weight can be determined using CODIS.

Lane Located on both gels and autorads, this area (holds) the ladder, control, or sample that is to be analyzed. Each ladder, control, or sample has its own lane.

LDAS The Local DNA Analysis System contains the detailed DNA records of a local DNA laboratory, including multiple sizings of autorads, gel details and other information not included in the CODIS indexes.

LDIS The Local DNA Index System contains the DNA records selected from LDAS for searching for DNA matches and for inserting into higher level (such as SDIS and NDIS) CODIS indexes.

Locus (loci) The DNA sequence at a specific position on a chromosome also referred to in PCR analysis as a marker. The physical location of a gene on a chromosome.

LPD Local Population Database.

Match Two DNA profiles are declared to match when they are indistinguishable in genetic type. For loci with discrete alleles, two samples match when they display the same set of alleles. For VNTR's, two samples match when the pattern of bands are similar and the positions of the corresponding bands at each locus fall within a preset distance. CODIS, using pre-defined criteria and the target profile, searches its database(s) to find specimens that meet this criteria and profile. If there are specimens in the CODIS database that meet all of the search criteria, they are candidates for a match. Forensic experts, using the CODIS data in conjunction with the facts of the case, determine if a positive match has occurred.

Match Stringency CODIS software supports three Match Stringency levels: low, moderate, and high. The Match Stringency determines whether or not two DNA profiles match. Low stringency matches occur when one or more bands/alleles match between the target and candidate profiles at a given locus. Moderate stringency matches require all bands/alleles to match, but the target and candidate profiles can contain a different number of bands/alleles. That is, if the target profile has three bands/alleles and the sample profile has two, then two bands/alleles must match. High stringency matches require all bands/alleles to match.

Match ReportAfter CODIS determines that two or more DNA profiles match, an electronic report is generated by CODIS and automatically distributed to the laboratories responsible for the matching profiles.

MembraneA nylon piece of material. DNA fragments are transferred to, and they bond with, the membrane so that further DNA analysis may occur. See Southern Blotting.**MHS**Message Handling Service. Transports electronic mail message from one location to another.**Molecular weight**For RFLP analysis, a unit of measurement that creates a descriptive characteristic of each allele of a DNA profile. Each allele represents a specific molecular weight.**NDIS**National DNA Index System. National-level DNA database maintained by the FBI that contains data that have been uploaded through the LDIS and SDIS levels. It provides a national repository for DNA profiles to facilitate law enforcement efforts to locate criminals.**NDIS Audit Review Board**A board, composed of FBI personnel, that has the responsibility of auditing all NDIS participating laboratories' compliance to NDIS policies and procedures.

NDIS CustodianThe FBI employee(s) responsible for ensuring NDIS is operated in compliance with the DNA Identification Act, the Privacy Act, the NDIS Memorandum of Understanding between the FBI and participating laboratories, and all other relevant legislation/regulations.

NDIS Participant or NDIS Participating LaboratoryAn NDIS Participant can be either the State that signs the NDIS Memorandum of Understanding or any one of the laboratories that the State enters into the NDIS system.

NDIS Policies and Procedures Review BoardA board, composed of FBI personnel, that has the responsibility of establishing, reviewing, and modifying the NDIS policies and procedures.

NISTNational Institute of Standards and Technology.

NucleotideThe basic building blocks, or subunits, of DNA. They are, adenine, guanine, thymine, and cytosine; a phosphate molecule; and a sugar molecule (deoxyribose). The arrangement of the four nucleotides express an individual's genetic code or DNA profile.

Offender HitAn Offender Hit (OH) occurs when one or more forensic samples are linked to a convicted offender sample at SDIS or NDIS. Offender Hits are sometimes called case-to-offender hits. Cold and warm hits are counted as Offender Hits. Note: states permitted to have "suspect" indexes should classify hits against this index as Offender Hits.

ORIOriginating Agency Identifier

PCRPolymerase Chain Reaction. This is a method DNA analysis. Whereas RFLP

analysis requires a large amount of DNA for successful analysis, PCR allows labs to analyze DNA samples that are much smaller. PCR enables labs to take existing DNA samples and “copy” or “amplify” existing DNA. **Polymerase enzyme** This enzyme acts as a catalyst in the replication of DNA. It is the enzyme used in PCR analysis. **Polymorphism** The variation of DNA sequences among individuals such that at any given locus no one allele exists in more than 99% of the population. **Popstats** A software application that is part of the CODIS program suite. Popstats (short for population statistics) enables users to determine the probability of drawing a DNA profile at random from a given population. It shows how common a given DNA profile is. Law enforcement officials use these results in the courtroom to demonstrate exclusion or inclusion of a suspect in the criminal proceedings.

Population File The CODIS computer file that contains DNA results derived from population samples.

Population Sample A biological sample containing DNA, typically a blood sample from an anonymous individual that is subjected to DNA analysis. The results of the DNA are examined along with many other samples for statistical purposes. The statistical analysis then is applied to the interpretation of forensic DNA results. The population samples form the basis of the analyst’s opinion as to the significance of a DNA match.

Probe A single-strand DNA molecule containing a known sequence of nucleotides that is labeled with a radioactive tag that is used to help locate the complementary DNA sequence on the membrane. Once the complement is found, this radioactive probe bonds to the locus through hybridization.

Proficiency Test Proficiency testing is used periodically to demonstrate the quality performance of the DNA laboratory and serves as a mechanism for critical self evaluation. This will be accomplished by the analysis and reporting of results from appropriate biological specimens, submitted to the laboratory as test material or blind case evidence.

Qualified DNA Analyst Individual interpreting DNA analyses at a laboratory subject to the DNA Identification Act of 1994, qualified by the sponsoring laboratory.

Quality Assurance Those planned or systematic actions necessary to provide adequate confidence that a product or service will satisfy given requirements for quality.

Quality Audit A systematic and independent examination and evaluation to determine whether quality activities and results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.

Quality Control The day-to-day operational techniques and the activities used to fulfill requirements of quality.

Quality Plan A document setting out the specific quality practices, resources, and activities relevant to a particular product, process, service, contract, or

project.**Reading**A numerical indicator that is based on the molecular weight of the DNA at a specific location on the DNA molecule. These readings are stored in the CODIS database. A collection of readings for a specimen is referred to as a DNA profile.**Rebinning**Grouping adjacent bins whose absolute number in the database is less than 5.**Recidivism**A tendency to relapse into a previous condition or mode of behavior, especially in the case of criminal behavior. This inclination forms the basic assumption supporting the development of the CODIS database. Because of the tendency for criminals to repeat offend, the CODIS database provides a permanent record of their DNA. If they are involved in subsequent crimes where they leave their DNA specimens, these criminals can potentially be caught using the features of CODIS software, and the CODIS database.**Remote search**A search request that is initiated by one lab and sent to another lab to be performed.**Restriction enzyme (HAE III)**A protein that looks for specific nucleotide sequences and cuts the DNA at those sequences. It creates fragments of DNA that are more manageable.**RFLP**Restriction Fragment Length Polymorphism. This method of DNA analysis examines the variation, between individuals, that occurs in DNA fragments cut by restriction enzymes such as HAE III.**ROI**Region of Interest. Area of an autorad that is included in the sizing.**Sample**A portion of a specimen that can be used to yield various readings. In CODIS, each sample retains the original specimen number.**SDIS**State DNA Index System. This state-level database contains data uploaded from the local level (LDIS). There is only one SDIS per state.**SDR**Software Deficiency Report. Prior to software release, if a user runs into a problem with the CODIS software, an SDR is submitted outlining the problem.

SearcherA CODIS feature that enables users to look for specific DNA profiles by searching the CODIS indexes. The search parameters and DNA target profile are determined by the user.**Sequence**The order of nucleotides in a DNA molecule.**Single-target search**Searching the CODIS database to find a match for only one DNA target profile. See Batch Processing. **Sizing(v)** The process of making or using an existing image to mark a region of interest and executing the software which calculates fragment lengths. (n) Molecular weights associated with fragment lengths. See also reading.**SMR**Software Maintenance Report. Once the software has been released to the field, if a user encounters a problem or suggested improvement for the software, an SMR is submitted outlining the problem.**Specimen**Any item or object that yields DNA material. Specimens could be blood stains, semen stains, or fingernail clippings that are extracted from articles of clothing or bed linens received by a forensic lab.**Southern Blotting**A technique that is used to transfer a DNA specimen from a gel to a more permanent medium for analysis (membrane). The DNA specimen is transferred as it is laid out in the gel to a nylon membrane.**SRM**Standard Reference Material is standard reference material available for analytical calibration purposes. Specifically SRM 2390 "DNA Profiling Standard" (1992) is DNA reference material for the Human DNA Control K562. It is available from NIST, Attention: Standard Reference Material Program.

StringencyIn CODIS, stringency refers to the number of bands that must fall into a range in order to produce a DNA match. Stringency is one of the criterion used during searches.

- Low stringency: any band can match the target profile.- Medium stringency: the smallest number of bands in either the target or sample must match.- High stringency: all bands in the target match all bands in the sample.In the scientific world, stringency refers to the degree of homology permitted chemically when two single strands of DNA combine.**STR**Short Tandem Repeat. A tandem repeat in which the repeat units are 3, 4, or 5 pairs.**STUII**Secure Telephone Unit; the secure voice/data terminal used for NDIS communication which encrypts data for transmission over standard telephone lines.

Submitting AgencyThe criminal justice agency that submitted evidence to a forensic DNA crim laboratory. The Submitting Agency is responsible for investigating crimes.

Tandem repeatMultiple copies of an identical DNA sequence arranged in direct succession in a particular region of the chromosome. See VNTR and STR.**Target DNA Profile**DNA profile submitted by a criminal justice agency for the purpose of searching DNA profiles maintained by NDIS which could match an indexed DNA profile.

TWGDAMTechnical Working Group on DNA Analysis Methods

TWGDAM GuidelinesA document prepared by the Technical Working Group on DNA Analysis Methods entitled *Guidelines for Quality Assurance Program for DNA Analysis*, published in the *Crime Laboratory Digest* (Vol. 22, No. 2, April 1995).

Unidentified Persons IndexThe Unidentified Persons Index consists of DNA records from recovered living persons (e.g. children who can't or refuse to identify themselves), and recovered dead persons (including their body parts and tissues), whose identities are not known.

Unidentified Persons Reference IndexThe Unidentified Persons Reference Index consists of DNA records from missing persons and close biological relatives of missing persons.

Unknown sample (Q1)A sample from the crime scene or another source which the origin is not known. It could be from the suspect or the victim. For example, an unknown sample could be a blood stain extracted from a bed linen. Unknown samples are used

to help determine if there is a potential link between the crime scene evidence and the suspect. **Unsub**Unknown Subject. Term used for samples of unknown origin which have been entered into the database.**Upload**Transferring information from one lab and inserting it into another. For example, transferring data from an LDIS database to an SDIS database is considered an upload. The information that meets pre-defined criteria passes through the filters and is accepted into the receiving database, whereas, the information that does not meet the pre-defined criteria for the filters is not accepted.

UserPersonnel who have login access to the CODIS (i.e., State or local) system and/or qualified DNA analysts who are responsible for producing the DNA profiles stored in NDIS.**VCL**Valid Control Lengths. A range of acceptable values for known fragment lengths.**VNTR**Variable Number of Tandem Repeats. Repeating units of a DNA sequence; a class of RFLPs.

Warm MatchA warm match occurs when CODIS matches DNA profiles based on prior knowledge. As with a cold match, a warm match is verified by a qualified DNA analyst after CODIS makes the match. A typical example of a warm match is when an investigating officer develops a suspect in a rape case, obtains a blood sample, and has the qualified DNA analyst search it against similar cases from the same jurisdiction. In this example, the investigator believes several crimes are related and uses CODIS-generated matches as an investigative tool.

ATTACHMENT B

STATE DNA DATABASE STATUTES

CALIFORNIA

Citation	California Penal Code § § 296, 3060.5; Government Code § 76104.5
	“DNA and Forensic Identification Data Base and Data Bank Act of 1998”
Effective Date	L. 1989, c. 1304; amended in 1993, 1994, 1996 and 1998
Qualifying Offenses	Any person convicted of, pleads guilty or no contest to, any of the following crimes or is found not guilty by reason of insanity; Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes the duty to register in California as a sex offender under Section 290, except any offense involving lewd and lascivious conduct under Section 272 and any offense under subdivision (d) of Section 647. Murder (Sections 187, 190, 190.05) or an attempt to commit murder; Voluntary manslaughter (Section 192) or an attempt to commit voluntary manslaughter; Felony spousal abuse (Section 273.5); Aggravated sexual assault of a child (Section 269); Assault and battery felony offenses (Sections 217.1, 220, 241.1 243, 243.1m 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5); Mayhem (Section 203) or aggravated mayhem (Section 205) and an attempt to commit either of these offenses; Torture (Section 206) or an attempt to commit torture. Applies to those persons required to register under Section 290 because of commission, or attempt to commit a felony offense specified in Section 290; ¹ or conviction of murder in violation of Section 190 or 190.05; or conviction of felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1,

¹ 1996 amendment requires court to enter an order that the defendant register as a sex offender for sexual battery or attempted sexual battery; also requires that registered sex offenders, persons convicted of murder or of a felony assault or battery provide samples regardless of time of discharge, parole or release.

243.3, 243.4, 243.7, 244, 245, 245.2, 245.3 or 245.5; and is committed to the state prison, a county jail, or any institution under the jurisdiction of the Department of Youth Authority, or is granted probation, or is released from a state hospital.

The following offenses are included under Section 290: Assault with intent to commit rape or sodomy under Section 220;

Any offenses defined in (1), (2), (3), (4) and (6) of Section 261 and 264.1, 266, 267, 285, 286, 288, 288a, 289 or 647.6 or former Section 647a, or (1) or (2) of Section 314;

or attempts to commit the above-referenced offenses; or a mentally disordered sex offender;

or anyone convicted in any other state of an offense which, if committed in California, would have been punishable as one of the above-referenced offenses.

Section 261 - Rape;

Section 264.1 - Commits an act described in Section 261 or 289, either personally or by aiding and abetting another;

Section 266 - Enticing unmarried female (less than 18) for purposes of prostitution;

Section 267 - Takes youth less than 18 away from legal guardian for purposes of prostitution;

Section 285 - Incest;

Section 286 - Sodomy;

Section 288 - Lewd or lascivious acts with child under 14;

Section 288a - Oral copulation;

Section 289 - Penetration of genital or anal openings by foreign object;

Section 647.6 - Annoy/Molest child under 18;

Section 314 - Expose private parts;

Section 272 - Commission or omission of act causing youth less than 18 to come within the provisions of the Welfare and Institutions Code;

Section 6300 - Mentally Disordered sex offender;

Section 190 & 190.05 - Murder in the first and second degrees;

Section 217.1 - Assault upon President or Vice President;

Section 220 - Assault with intent to commit a sex offense;

Section 241.1 - Assault upon a custodial officer;

Section 243 - Battery against a public officer/peace officer, etc....;
Section 243.3 - Battery against transportation personnel or passenger;
Section 243.4 - Touching intimate parts of another;
Section 243.7 - Battery against juror;
Section 244 - Throwing of acid;
Section 245 - Assault with a deadly weapon;
Section 245.2 - Assault with a deadly weapon upon transportation personnel or passenger;
Section 245.3 - Assault with a deadly weapon upon a custodial officer; and
Section 245.5 - Assault with a deadly weapon on school employee.

Applies to juveniles, persons sentenced to death, life without the possibility of parole or any life or indeterminate term.

For offenders on probation and parole and offenders returned to a state correctional institution for violation of parole or release, requirement to provide specimens applies regardless of when the crime committed became a qualifying offense.

DNA Databank Filed with offender's file maintained by the Sex Registration Unit of the Department of Justice or maintained in a computerized databank system, separate from the State summary criminal history information.

Sample Two specimens of blood, a saliva sample (and right thumb and full palm print impressions). Right thumbprints shall be taken at the time of withdrawal of blood and placed on the forms and the blood vial label.

Collecting Agency For offenders granted probation or serve entire term in a county jail or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections shall, as soon as administratively practicable (but prior to physical release from custody), be required to provide DNA sample at a county jail facility or other state, local or private facility designated for the collection of these specimens. If the person is not incarcerated at the time of sentencing, the court shall order the person to report within 5 calendar days to a county jail facility or other state, local or private facility designated for the collection of specimens.

For offenders sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall

collect the specimens during the intake process at the reception center designated by the Director or as soon as administratively practicable thereafter at the receiving penal institution.

For offenders accepted from another state under interstate compact, acceptance is conditional on offender providing specimens...within 5 calendar days after the offender reports to the supervising agent or within 5 calendar days of notice to the offender... person to report to a county jail facility in the county where he/she resides, is temporarily located, or if confined, to such state, county, local private or other facility.

Subject to the approval of the Director of the FBI, offenders confined or incarcerated in a federal prison or federal institution in California who are convicted of a qualifying offense or of a similar crime under the laws of the United States or any other state are subject to this Act if any of the following apply:

- (1) Person committed a qualifying offense in California;
- (2) Person was a resident of California at the time of the offense;
- (3) Person has any record of a California conviction for a sex or violent offense described in Section 296, regardless of when the crime was committed; or
- (4) Person will be released in California.

*Once a federal data bank is established and accessible to the California Department of Justice, the California DNA laboratory shall, upon the request of the U.S. Department of Justice, forward the samples to the U.S. Department of Justice DNA laboratory.

If an offender who is released on parole, furlough or other release, is returned to a state correctional institution and is serving or at any time has served a term of imprisonment for an offense defined in Section 296, the person shall submit such specimens.

Whenever the DNA Laboratory notifies the Department of Corrections that a specimen or sample is not usable, the person who provided the original specimen/sample shall submit to the collection of additional specimens/samples. The Department of Corrections or other responsible law enforcement agency shall collect the additional specimens/samples.

The Director of Corrections or the Chief Administrative Officer of the detention facility, jail or other facility shall forward the

specimens/samples promptly to the Department of Justice.

The Department of Justice shall provide all blood specimen vials, mailing tubes, labels and instructions.

Indemnification from civil and criminal liability for withdrawing blood when done in accordance with medically accepted practices or for obtaining saliva samples or thumb and palm print impressions when performed in accordance with standard professional practices.

Any person who refuses to provide the required specimens/samples and has received notice of such obligation is guilty of a misdemeanor. The refusal or failure to provide the specimen, sample or print impressions is punishable as a separate offense by both a fine of \$500 and imprisonment of up to 1 year in a county jail or if already imprisoned in a state prison, by sanctions for misdemeanors according to the Department of Corrections.

Includes a provision permitting revocation of parole for those who refuse to register or provide samples, provided that such revocation does not exceed six months [*see* Penal Code § 3060.5].

Repository

Department of Justice

Compatibility w/FBI

Access and Disclosure DNA information is confidential...non-DNA forensic identification information may be filed with Sex Registration Unit of the Department of Justice. DNA and other forensic information shall not be included in the state summary criminal history information (except notations may be made in criminal history that such samples have been collected).

DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, and district attorneys' offices, at the request of the agency. Dissemination of such information to law enforcement agencies and district attorneys' offices outside the state shall be done in conformity with the provisions of this section. This information shall be available to defense counsel

upon court order.

Not a violation to disseminate statistical or research information provided the subject cannot be identified.... all such requests for information shall be cataloged by the Department of Justice and beginning January 1, 2000, annually reported to the Legislature.

Notwithstanding the above, population data base or data bank information may be shared with the following:

- (1) Federal, state or local law enforcement agencies;
- (2) Crime laboratories, whether public or private, that serve federal, state and local law enforcement agencies that have been approved by the Department of Justice;
- (3) The attorney general's office of any state; or
- (4) Any third party that the Department of Justice deems necessary to assist with statistical analyses of the population data base or in the identification of human remains.

The Department of Justice may provide portions of the specimens/samples to local public DNA laboratories for identification purposes as long as privacy provisions are followed and only tests for law enforcement identification purposes are performed.

Unlawful Disclosure Knowing unauthorized disclosure punishable as a misdemeanor.

Expungement/Destruction A person whose DNA profile has been included in the data bank shall have the information and materials expunged when (1) the underlying conviction or disposition has been reversed and the case dismissed; (2) the defendant has been found factually innocent of the underlying offense; (3) the defendant has been found not guilty; or (4) the defendant has been acquitted of the underlying offense. The court issuing the reversal, dismissal, or acquittal shall order the expungement and send a copy of the order to the Department of Justice DNA Laboratory. Upon receipt of the order, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records.

A person whose DNA profile has been included in the data bank may make a written request to expunge information by sending a copy of the request to the trial court that entered the conviction or rendered disposition, the Department of Justice DNA laboratory and to the prosecuting attorney. The court has the discretion to grant or deny the request with a denial deemed a nonappealable

order.

Upon court order, the Department of Justice shall destroy any specimen/sample unless the Department determines that the person has otherwise become obligated to provide a specimen as a result of a separate conviction.

The Department of Justice is not required to destroy an autoradiograph or other item if evidence relating to another person would thereby be destroyed.

Any identification, warrant, probable cause to arrest or arrest based upon a data bank match is not invalidated due to a failure to expunge or a delay in expunging records.

The Department of Justice is authorized to dispose of specimens/samples in the normal course of business and in a reasonable manner as long as the disposal method is designed to protect the identity and origin of the specimen/sample.

Fees

Other

Contained within California's Sex Offender Registry Statute.

Requires that laboratories of the Department of Justice and crime laboratories designated by the Department of Justice be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) in order to analyze crime scene samples and other samples of known and unknown origin and to compare the forensic profiles. Laboratories, including the Department of Justice, shall be accredited by ASCLD/LAB in order to contribute data to the DNA data bank. Additionally, each laboratory shall submit to the Department of Justice for review the annual report required by ASCLD/LAB. This applies only to California laboratories and does not preclude the searching of DNA profiles at the national level. Laboratories satisfying federal standards may perform forensic identification analyses, including DNA profiling, independent of the State DNA data bank program.

Suspect samples shall only be compared to samples taken from the criminal investigation for which he/she is a suspect and for which the sample was originally taken either by court order or

Effective Date August 2, 1994

Qualifying Offenses Effective January 1, 1996, applies to those persons convicted and sentenced for one of the following felony offenses:

Penal Law (PL)§ 120.05 - assault in the second degree;
PL§ 120.10 - assault in the first degree;
PL§ 120.11 - aggravated assault on a police or peace officer;
PL§ 125.15 - manslaughter in the second degree;
PL§ 125.20 - manslaughter in the first degree;
PL§ 125.25 - murder in the second degree;
PL§ 125.27 - murder in the first degree;
PL§ 130.25 - rape in the third degree;
PL§ 130.30 - rape in the second degree;
PL§ 130.35 - rape in the first degree;
PL§ 130.40 - sodomy in the third degree;
PL§ 130.45 - sodomy in the second degree;
PL§ 130.50 - sodomy in the first degree;
PL§ 130.65 - sexual abuse in the first degree;
PL§ 130.67 - aggravated sexual abuse in the second degree;
PL§ 130.70 - aggravated sexual abuse in the first degree;
PL§ 205.10 - escape in the second degree;
PL§ 205.15 - escape in the first degree;
PL§ 205.17 - absconding from temporary release in the first degree;
PL§ 205.19 - absconding from a community treatment facility;
or
PL§ 255.25 - incest.

PL § § 205.10-205.19 [the offenses relating to escape] constitute qualifying offenses when the offender has been convicted within the previous five years of one of the other felonies referenced above.

DNA Databank After promulgation of a policy by the Commission on Forensic Science, the Division of Criminal Justice Services (DNA Identification Index) is authorized to establish a computerized State DNA identification index, after review and approval of the Division's plan by the DNA Subcommittee and Commission on Forensic

Expungement/Destruction Upon receipt of a notification of a reversal of a conviction or of the granting of a pardon by the Division of Criminal Justice Services, the DNA record shall be expunged from the index. The Division shall, by regulation, prescribe procedures to ensure that the record, analyses and sample are returned to the subject.

Fees
Other

Creates a Commission on Forensic Science and a DNA Subcommittee responsible for developing minimum standards and a program of accreditation for all forensic laboratories in NYS; accreditation with respect to a DNA laboratory shall be under the direction of the DNA Subcommittee which shall have the sole authority to grant, deny, review or modify a DNA forensic laboratory accreditation. A laboratory director who knowingly operates a laboratory without obtaining the required accreditation shall be subject to a civil penalty not to exceed \$7,500 and such other penalties prescribed by law.

Forensic laboratories are required to become accredited for forensic DNA testing by January 1, 1996 and to be fully accredited by July 1, 1997.

Provides that all records, findings, reports and results of DNA testing are confidential and may not be disclosed or redisclosed without the consent of the subject of such DNA testing; excluding records maintained in the State DNA identification index. Such records, findings, reports and results shall not be released to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies or services or private investigation services.

Provides for post-conviction DNA testing under the following circumstances:

- (1) Conviction occurred before January 1, 1996;
- (2) Defendant requests DNA testing on specific evidence;
- (3) Court determines that evidence containing DNA was secured in connection with the trial;
- (4) Court determines that if DNA testing had been conducted on such evidence and the results admitted in the trial, there exists a reasonable probability that the verdict would have been more favorable to the defendant.

STATE DNA DATABASE STATUTES

SELECTED PROVISIONS - 1999 AMENDMENTS

November 1999

Prepared for

Federal Bureau of Investigation

Laboratory Division

by

M. Dawn Herkenham

**STATE DNA DATABASE LAWS
QUALIFYING OFFENSES**

	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault & Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juvenil</i>
Alabama	✓	✓	✓	✓	✓	✓	✓	✓	
Alaska	✓	✓	✓	✓	✓	✓		✓	✓
Arizona	✓	✓							✓
Arkansas	✓	✓	✓	✓	✓	✓			✓
California	✓	✓	✓	✓				✓	✓
Colorado	✓	✓							✓
Connecticut	✓	✓				✓			
Delaware	✓	✓						✓	
Florida	✓		✓	✓	✓			✓	✓
Georgia	✓	✓							
Hawaii	✓	✓	✓						
Idaho	✓	✓	✓	✓	✓			✓	✓
Illinois	✓	✓						✓	✓
Indiana	✓	✓	✓	✓	✓	✓	✓		
Iowa	✓		✓	✓		✓	✓		
Kansas	✓	✓	✓					✓	✓
Kentucky	✓								
	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault & Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juvenil</i>
Louisiana*	✓	✓	✓	✓		✓		✓	✓
Maine	✓	✓	✓	✓	✓	✓	✓	✓	✓
Maryland	✓		✓	✓	✓				
Massachusetts	✓	✓	✓	✓	✓	✓	✓	✓	
Michigan	✓								
Minnesota	✓		✓					✓	✓
Mississippi	✓	✓							
Missouri	✓	✓	✓	✓		✓			

Montana	✓	✓	✓	✓	✓	✓		✓	✓
Nebraska	✓	✓	✓						
Nevada	✓	✓	✓	✓			✓	✓	
New Hampshire	✓								✓
New Jersey	✓							✓	✓
New Mexico	✓	✓	✓	✓	✓	✓	✓		✓
New York	✓	✓	✓	✓	✓	✓	✓	✓	
North Carolina	✓		✓	✓	✓	✓			
	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault & Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juvenil</i>
North Dakota	✓	✓						✓	
Ohio	✓	✓	✓			✓		✓	✓
Oklahoma	✓	✓	✓	✓					
Oregon	✓	✓	✓				✓	✓	✓
Pennsylvania	✓	✓	✓					✓	✓
Rhode Island	✓	✓	✓						
South Carolina	✓	✓							✓
South Dakota	✓	✓							
Tennessee	✓	✓	✓	✓	✓	✓	✓	✓	✓
Texas	✓	✓	✓	✓			✓		✓
Utah	✓	✓	✓			✓			
Vermont	✓	✓	✓	✓	✓	✓	✓	✓	
Virginia	✓	✓	✓	✓	✓	✓	✓	✓	✓
Washington	✓	✓	✓	✓	✓	✓		✓	✓
West Virginia	✓	✓	✓	✓	✓	✓			
Wisconsin	✓	✓	✓	✓	✓				
Wyoming	✓	✓	✓	✓	✓	✓	✓	✓	
	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault & Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juvenil</i>

Total	50	41	36	27	20	22	14	25	24

Key*Listed under Retroactive**I Incarceration**P Parole**PR Probation*

** Effective September 1, 2000, Louisiana is authorized to collect a DNA sample from persons arrested for a qualifying offense.*

States listed in bold cover all felony offenders.

NEW YORK

Citation McKinney's Consolidated Laws of New York Annotated
Executive Law Article 49-B (§ § 995 *et seq.*)

Effective Date August 2, 1994; amended 1999.

Qualifying Offenses Applies to person convicted of and sentenced for the following offenses committed on or after December 1, 1999 as well as persons convicted and sentenced for any of the following offenses committed prior to December 1, 1999 where service of the sentence has not been completed prior to December 1, 1999:

- PL§ 120.05 - assault in the second degree;
- PL§ 120.06 - gang assault in the second degree and attempt;
- PL§ 120.07 - gang assault in the first degree and attempt;
- PL§ 120.08 - assault on a peace or police officer and attempt;

PL§ 120.10 - assault in the first degree and attempt;
PL§ 120.11 - aggravated assault on a police or peace officer;
and attempt;
PL§ 125.15 - manslaughter in the second degree;
PL§ 125.20 - manslaughter in the first degree;
PL§ 125.25 - murder in the second degree;
PL§ 125.27 - murder in the first degree;
PL§ 130.25 - rape in the third degree;
PL§ 130.30 - rape in the second degree;
PL§ 130.35 - rape in the first degree;
PL§ 130.40 - sodomy in the third degree;
PL§ 130.45 - sodomy in the second degree;
PL§ 130.50 - sodomy in the first degree;
PL§ 130.65 - sexual abuse in the first degree;
PL§ 130.66 - aggravated sexual abuse in the third degree;
PL§ 130.67 - aggravated sexual abuse in the second degree;
PL§ 130.70 - aggravated sexual abuse in the first degree;
PL§ 130.75 - course of sexual conduct against a child in the
first degree and attempt;
PL§ 130.80 - course of sexual conduct against a child in the
second degree;
PL§ 135.20 - kidnapping in the second degree and attempt;
PL§ 135.25 - kidnapping in the first degree and attempt;
PL§ 140.20 - burglary in the third degree and attempt;
PL§ 140.25 - burglary in the second degree and attempt;
PL§ 140.30 - burglary in the first degree and attempt;
PL§ 150.15 - arson in the second degree and attempt;
PL§ 150.20 - arson in the first degree and attempt;
PL§ 160.10 - robbery in the second degree and attempt;
PL§ 160.15 - robbery in the first degree and attempt;
PL§ 215.16 - intimidating a victim or witness in the second
degree ;
PL§ 215.17 - intimidating a victim or witness in the first
degree and attempt;
PL§ 255.25 - incest;
PL§ 265.02 - criminal possession of a weapon in the third
degree and attempt;

PL§ 265.03 - criminal possession of a weapon in the second degree and attempt;

PL§ 265.04 - criminal possession of a dangerous weapon in the first degree and attempt;

PL§ 265.08 - criminal use of a firearm in the second degree and attempt;

PL§ 265.09 - criminal use of a firearm in the first degree and attempt;

PL§ 265.12 - criminal sale of a firearm in the second degree and attempt;

PL§ 265.13 - criminal sale of a firearm in the first degree and attempt;

PL§ 265.14 - criminal sale of a firearm with the aid of a minor and attempt;

PL§ 205.10 - escape in the second degree;

PL§ 205.15 - escape in the first degree;

PL§ 205.17 - absconding from temporary release in the first degree;

PL § 205.19 - absconding from a community treatment facility.

PL § § 205.10-205.19 [the offenses relating to escape] constitute qualifying offenses when the offender has been convicted within the previous five years of one of the other felonies referenced above.

Applies to persons convicted of and sentenced for any of the following offenses on or after December 1, 1999:

PL§ 220.18 - criminal possession of a controlled substance in the second degree;

PL§ 220.21 - criminal possession of a controlled substance in the first degree;

PL§ 220.31 - criminal sale of a controlled substance in the fifth degree;

PL§ 220.34 - criminal sale of a controlled substance in the fourth degree;

PL§ 220.39 - criminal sale of a controlled substance in the third degree;

PL§ 220.41 - criminal sale of a controlled substance in the second degree;

PL§ 220.43 - criminal sale of a controlled substance in the first degree;
PL§ 220.44 - criminal sale of a controlled substance in or near school grounds; or
PL§ 155.30(5) - grand larceny in the fourth degree.

DNA Databank After promulgation of a policy by the Commission on Forensic Science, the Division of Criminal Justice Services (DNA Identification Index) is authorized to establish a computerized State DNA identification index, after review and approval of the Division's plan by the DNA Subcommittee and Commission on Forensic Science and filing of such plan with the Legislature.

Sample Sample appropriate for DNA testing

Collecting Agency Designated offender required to provide a sample.

The sample shall be collected, stored and forwarded to any forensic DNA laboratory which has been authorized by the Commission on Forensic Science to perform DNA testing for inclusion in the state DNA identification index.

The Division of Criminal Justice Services, in consultation with the Commission on Forensic Science, the Department of Health, the Divisions of Parole and Probation and Correctional Alternatives, shall promulgate procedures for notifying designated offenders of their obligations under this Act.

Repository

Compatibility w/FBI Authorizes the mutual exchange, use and storage of DNA records with the FBI provided that the Commission on Forensic Science determines that such is consistent with the Act.

Access and Disclosure of 1994. Similar to provisions specified in the DNA Identification Act of 1994.

DNA records shall be released for the following purposes:
(1) to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office for law enforcement identification purposes upon submission of a DNA record in connection with the investigation of the commission of one or more crimes or to assist in the recovery or identification of

specified human remains, including identification of missing persons, provided that there exists a written agreement governing the use and dissemination of such DNA records;

(2) for criminal defense purposes (including access relating to the number of requests made for a comparison search); and

(3) for creating or maintaining a population statistics database or for identification research and protocol development for forensic DNA analysis or quality control purposes if personally identifiable information.

Unlawful Disclosure Intentional unauthorized disclosure is punishable as a class E felony. Anyone who knowingly tampers or attempts to tamper with any DNA sample or the collection container is guilty of a class E felony.

Expungement/Destruction Upon receipt of a notification of a reversal of a conviction or of the granting of a pardon by the Division of Criminal Justice Services, the DNA record shall be expunged from the index. The Division shall, by regulation, prescribe procedures to ensure that the record, analyses and sample are returned to the subject.

**Fees
Other**

Creates a Commission on Forensic Science and a DNA Subcommittee responsible for developing minimum standards and a program of accreditation for all forensic laboratories in NYS; accreditation with respect to a DNA laboratory shall be under the direction of the DNA Subcommittee which shall have the sole authority to grant, deny, review or modify a DNA forensic laboratory accreditation. A laboratory director who knowingly operates a laboratory without obtaining the required accreditation shall be subject to a civil penalty not to exceed \$7,500 and such other penalties prescribed by law.

Forensic laboratories are required to become accredited for forensic DNA testing by January 1, 1996 and to be fully accredited by July 1, 1997.

Provides that all records, findings, reports and results of DNA testing are confidential and may not be disclosed or redisclosed without the consent of the subject of such DNA testing; excluding records maintained in the State DNA identification index. Such records, findings, reports and results shall not be released to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies or services or private investigation services.

Provides for post-conviction DNA testing under the following

7/15/98

circumstances:

- (1) Conviction occurred before January 1, 1996;
 - (2) Defendant requests DNA testing on specific evidence;
 - (3) Court determines that evidence containing DNA was secured in connection with the trial;
 - (4) Court determines that if DNA testing had been conducted on such evidence and the results admitted in the trial, there exists a reasonable probability that the verdict would have been more favorable to the defendant
- .

REGERINGSKANSLIET

20 April 2000

Ministry of Justice
Stockholm, Sweden

Government Secretariat
Lower Albert Road
Hong Kong

Enheten for straffratt samt allman ordning och sakerhet
Rattssakkunnig

Miss Angela LEE

Lotta Gustavson

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Mobil +46

Fax +46 8 405 43 82

Concerning Your letter of the 28th of March 2000, SBCR 11/2801/88 Pt. 28

Dear Miss Lee,

I hereby send You the information concerning the Swedish legislation on DNA samples that You asked for in Your letter of the 28th of March. If You have any complementary questions please do not hesitate to contact me.

I enclose copies of the relevant legislation. Unfortunately not all the legislation has been translated into English.

Yours Sincerely

Lotta Gustavson
Legal adviser

1. The Swedish code of judicial procedure, Chapter 28 Search of premises, body search and body examination.

2. There is no such definition.

3. -:-

4. "Body search" - The examination of clothes and other things a person has on him and of bags, packages and other objects which a person has with him.

"Body examination" - The examination of exterior or interior of the human body and also the taking of samples from the human body and examination of such samples.

A body examination may not be conducted in such a way as the examinee is at risk as regards future health or injury.

5. See enclosed copy of Chapter 28 Section 11 and 12.

6. The legislation concerning registers of the police (Polisdatlagen SFS 1998:622) includes provisions for the establishing of databases for DNA samples.

7. Orders authorizing a body search or a body examination are issued by the investigation leader, the prosecutor or the court. If delay entails risk a body search or a body examination may be decided by a police officer.

8. Only a physician or an accredited nurse may draw a blood sample. Only a physician may perform a more extensive examination.

9, 10. The samples must be destroyed when the investigation is closed.

11. The purpose is mainly to facilitate the identification of persons in connection with investigations of crime.

12. A DNA database may only contain information concerning the results of a DNA analysis. The registration is restricted to information concerning the identity of the individual in question. Results that contain information concerning the personal character may not be registered.

13. Information in a DNA database concerning individuals is subject to secrecy. According to the Swedish Law on Secrecy such information is subject to secrecy if it is not obvious that the information can be exposed/revealed without damage to the individual or people close to him.

14. See enclosed copy of the Swedish Penal Code Chapter 4 Section 9 c.

The Swedish Code of Judicial Procedure, Chapter 28

Chapter 28

SEARCH OF PREMISES, BODY SEARCH AND BODY EXAMINATION

Section 1

If there is reason to believe that an offence punishable by imprisonment has been committed, houses, rooms, or closed storage spaces may be searched to look for objects subject to seizure or to detect other information of potential importance to the inquiry of the offence.

The premises of a person, other than one reasonably suspected of having committed the offence, may not be searched unless the offence was committed there, the suspect was apprehended there, or extraordinary reason indicates that the search will reveal an object subject to seizure or other information concerning the offence.

A suspect's consent is not adequate to justify a search of his premises unless the suspect personally initiated the request for the search. (SFS 1964:166)

Section 2

In order to find a person who is to be apprehended, arrested, detained, taken into custody for questioning or appearance in court or subjected to a body search or a body search conducted a search may be conducted at his premises, or at another person's premises if there is extraordinary reason to assume that the person wanted is present there. The same applies to a defendant wanted for service of a summons application or summons to appear at the hearing if efforts to serve have failed or are considered pointless. (1995:637)

Section 2a

Means of transport at a certain place may be searched to find a person subject to apprehension, arrest, or detention for an offence in respect of which a less severe penalty than four years imprisonment is not prescribed, or for the attempt of such an offence if there is special reason to believe that the suspect will travel through that place. (SFS 1991:666)

Section 3

Public places, locations frequented by vagrants or criminals, or places where objects of the kind sought are frequently purchased or pawned may be searched for the purposes stated in Sections 1 and 2, even in circumstances other than those specified in Sections 1 and 2.

Section 3a

A search of premises may be ordered only if the reasons for the search outweigh the consequent intrusion or other detriment to the suspect or to another adverse interest. (SFS 1989:650)

Section 4

Orders authorizing a search of premises are issued by the investigation leader, the prosecutor, or the court, except as provided in paragraph 3. Orders authorizing a search of premises for the purpose of service shall always be issued by the court. If in other cases the search of premises is likely to be extensive or cause extraordinary inconvenience to the person whose premises are to be searched, the measure should not be taken without a court order unless delay entails risk.

The court may entertain an issue of search of premises upon the request of the investigation leader or the prosecutor. After

prosecution has been initiated, the court may also take up such an issue upon request of the aggrieved person or on its own motion. An issue for search of premises for the purpose of service is entertained by the court on its own motion or upon the request of the police authority or the prosecutor.

The police authority or a police officer, pursuant to provisions of the Police Act (1984:387), may authorize a search of premises to find a person whose detention has been authorized by a decision as provided in Chapter 24, Section 17, paragraph 3, or who is to be taken into custody for appearance in court. (SFS 1995:637)

Section 5

If delay entails risk, a police officer may search premises without having obtained a search order as prescribed in Section 4. However, this does not apply to a search for the purpose of service. (SFS 1995:637)

Section 6

Inconvenience or damage incident to searches of premises should be avoided to the greatest extent practicable.

A room or a storage space may be opened by force if necessary. In that event, it should be closed by appropriate means after completion of the search.

In the absence of special reason, premises may not be searched between nine o'clock in the evening and six o'clock in the morning.

Section 7

Whenever possible, a reliable witness commissioned by the officer conducting the search shall be present at a search of premises. The

officer conducting the search may be assisted by an expert or another person.

The person whose premises are to be searched or, if he is absent, his household employees, shall be given an opportunity to observe the search and to have a witness present unless the search would thereby be delayed. When neither the person whose premises were searched nor any of his employees nor a witness called by them was present at the search, the person whose premises were searched must be notified of the search as soon as this is possible without detriment to the investigation.

An aggrieved person or his attorney may be present during the search to furnish necessary information; however, the aggrieved person or attorney should learn no more than necessary of the facts and circumstances revealed at the search.

Section 8

A postal or telegraphic communication, an account book, or another private document found during a search of premises may be more closely examined, and a letter or other closed document may be opened only as prescribed in Chapter 27, Section 12, paragraph 1.

Section 9

A record shall be kept of a premises search, stating the purpose of the search and describing what the search revealed.

Upon request, a person whose premises have been searched is entitled to receive a certificate of the search, stating the offence under investigation.

Section 10

The investigation leader, the prosecutor, or a police officer may search a non-public place other than those mentioned in Section 1 for the purposes stated in Section 1 or 2 of this chapter.

Section 11

If there is reason to believe that an offence punishable by imprisonment has been committed a person reasonably suspected of the offence may be subjected to a body search to discover an object subject to seizure or other information of potential importance to the investigation of the offence.

A person other than one reasonably suspected of the offence may be subjected to a body searched if there is extraordinary reason to assume that an object subject to seizure thereby be discovered or it is otherwise of importance for investigating the offence.

A body search means the examination of clothes and other things a person has on him and of bags, packages and other objects which a person has with him. (SFS 1993:1408)

Section 12

A person reasonably suspected of an offence for which imprisonment may be imposed may be subjected to a body examination for the purposes stated in Section 11.

Body examination means the examination exterior or interior of the human body and also the taking of samples from the human body and examination of such samples. A body examination may not be conducted in such a way as the examinee is at risk as regards future health or injury.

The person who shall be subject of body examination may be held for the purpose for up to six hours or, if there are extraordinary reasons, a further six hours. (SFS 1993:1408)

Section 13

The applicable provisions in Sections 3a, 4, 8, and 9, governing search of premises, shall apply to body searches and body examinations. A body search or body examination may be decided by a police officer if delay entails risk.

A more extensive search or examination shall be performed indoors and in private. If it is performed by anyone other than a physician, a reliable witness commissioned by the officer conducting it shall be present whenever possible. Only a physician or an accredited nurse may draw a blood sample. Only a physician may perform a more extensive examination.

Only a female, a physician, or an accredited nurse may perform or witness a body search or a body examination performed on a female. However, a body search only involving the examination of something a woman has with her and body examination which only involves taking blood samples alcohol breath test may be executed and witnessed by a man. (SFS 1995:491)

Section 14

A person arrested or detained may be photographed, and fingerprinted; he may also be subjected to any similar measure. Another person may be subject to such measures if necessary to obtain information about an offence punishable by imprisonment.

The government issue further regulations concerning measures mentioned in this section. (SFS 1974:573)

Section 15

The provisions governing searches of premises, body searches, or body examinations contained in any law or regulation shall supersede any inconsistent provision contained in this chapter.

The Swedish Penal Code, Chapter 4

Section 9

A person who, in a case not covered by Section 8, unlawfully opens a letter or a telegram or otherwise obtains access to something kept under seal or lock or otherwise enclosed, shall be sentenced for *intrusion into a safe depository* to a fine or imprisonment for at most two years.

Section 9a

A person who, in a case other than as stated in Section 8, unlawfully and secretly listens to or records by technical means for sound reproduction, speech in a room, a conversation between others or discussions at a conference or other meeting to which the public is not admitted and in which he himself does not participate, or to which he has improperly obtained access, shall be sentenced for *eavesdropping* to a fine or imprisonment for at most two years. (Law 1975:239)

Section 9b

A person who employs technical means with the intention of committing a breach of telecommunication secrecy in the manner stated in Section 8 or to commit a crime as defined in Section 9a, shall be sentenced for preparation of such a crime to a fine or imprisonment for at most two years if he is not responsible for a completed crime. (Law 1975:239)

Section 9c

A person who, in cases other than those defined in Sections 8 and 9, unlawfully obtains access to a recording for automatic data processing or unlawfully alters or erases or inserts such a recording in a register, shall be sentenced for *breach of data secrecy* to a fine or imprisonment for at most two years. A recording in this context includes even information that is being

processed by electronic or similar means for use with automatic data processing. (Law 1998:206)

Section 10

Attempt, preparation or conspiracy to commit kidnapping, unlawful deprivation of liberty or placing a person in a distressful situation, and any failure to reveal such crimes, shall be adjudged in accordance with the provisions of Chapter 23. The same shall apply to an attempt or preparation to commit unlawful coercion of a serious nature or breach of data secrecy, which if it had been completed, could not be considered petty. (Law 1998:206)

Section 11

Breach of domiciliary peace or unlawful intrusion not of a serious nature, unlawful eavesdropping not committed in a public place or preparation for such a crime, molestation which did not occur in a public place, or intrusion into a safe depository, may be prosecuted by a prosecutor only if the injured party reports the crime for prosecution or if prosecution is called for in the public interest. This also applies to unlawful coercion by threatening to prosecute or to inform on another for a crime or to give detrimental information about another, as well as an attempt to commit or prepare such a crime. (Law 1975:239)

Svensk författningssamling i loptext (SFST)

Observera att det kan förekomma fel i författningstexterna. Bilagor till författningarna saknas. Kontrollera därför alltid texten mot den tryckta versionen.

SFS nr: **1998:622**Departement/
myndighet: **Justitiedepartementet L5**Rubrik: **Polisdatalag (1998:622)**Utfärdad: **1998-06-11**Andring införd: **t.o.m. SFS 1999:96**

ALLMANNA BESTÄMMELSER

Lagens tillämpningsområde

1 § Denna lag gäller utöver personuppgiftslagen (1998:204) vid behandling av personuppgifter i polisens verksamhet för att

1. förebygga brott och andra störningar av den allmänna ordningen och säkerheten,
2. övervaka den allmänna ordningen och säkerheten, hindra störningar därav samt ingripa när sådana har inträffat eller
3. bedriva spaning och utredning i fråga om brott som hör under allmänt åtal.

Lagen gäller också behandling av sådana uppgifter som avses i 25 och 26 §§.

Lagen gäller inte för behandling av personuppgifter som företas med stöd av lagen (1998:620) om belastningsregister eller lagen (1998:621) om misstankeregister.

2 § Bestämmelserna i 10-36 §§ gäller endast automatiserad behandling av uppgifter.

Definitioner

3 § I denna lag avses med

underrättelseverksamhet: polisverksamhet som består i att samla, be-arbeta och analysera information för att klarlagga om brottslig verksamhet har utövats eller kan komma att utövas och som inte utgör förundersökning enligt 23 kap. rättegångsbalken,

kriminalunderrättelseverksamhet: annan underrättelseverksamhet

an den som bedrivs av Sakerhetspolisen,

allvarlig brottslig verksamhet: verksamhet som innefattar brott for vilket ar foreskrivet fangelse i tva ar eller darover,

sarskild undersokning: en undersokning i kriminalunderrattelseverksamhet som innebar insamling, bearbetning och analys av uppgifter i syfte att ge underlag for beslut om forundersokning eller om sarskilda atgarder for att forebygga, forhindra eller upptacka brott,

DNA-analys: varje forfarande som kan anvandas for analys av deoxyribonukleinsyra.

De begrepp som i ovrigt anvands i denna lag har samma betydelse som i personuppgiftslagen (1998:204).

Personuppgiftsansvarig

4 § Rikspolisstyrelsen ar personuppgiftsansvarig for behandling av uppgifter som avses i 23, 25 och 29 §§.

Behandling av kansliga personuppgifter

5 § Uppgifter om en person far inte behandlas enbart pa grund av vad som ar kant om personens ras eller etniska ursprung, politiska asikter, religiosa eller filosofiska overtygelse, medlemskap i fackforening, halsa eller sexuella laggnig.

Om uppgifter om en person behandlas pa annan grund far uppgifterna kompletteras med sadana uppgifter som avses i forsta stycket, om det ar oundgängligen nodvandigt for syftet med behandlingen.

Utlamnande av uppgifter

6 § Uppgifter som ar nodvandiga for att framstalla rattsstatistiken skall lamnas till den myndighet som ansvarar for att framstalla sadan statistik.

7 § Uppgifter far lamnas ut till en utlandsk myndighet eller en mellanfolklig organisation, om utlamnandet foljer av en internationell overenskommelse som Sverige efter riksdagens godkannande har tilltratt.

Regeringen far meddela foreskrifter om att uppgifter pa begaran far lamnas till polis- eller aklagarmyndighet i en stat som ar ansluten till Interpol om det behövs for att myndigheten eller organisationen skall kunna forebygga, upptacka, utreda eller beivra brott.

Uppgifter far vidare lamnas ut enligt vad som framgar av 1 kap. 3 § tredje stycket sekretesslagen (1980:100).

8 § Regeringen far meddela foreskrifter om att uppgifter far lamnas ut aven i andra fall an som sags i 6 och 7 §§.

Rattelse och skadestand

9 § Bestammelserna i personuppgiftslagen (1998:204) om rattelse och skadestand galler vid behandling av personuppgifter enligt denna lag eller enligt foreskrifter som har meddelats med stod av lagen.

BESTAMMELSER OM AUTOMATISERAD BEHANDLING

Behandling av uppgifter om kvarstaende misstankar

10 § Om en forundersokning mot en person har lagts ned pa grund av bristande bevisning far uppgifter om brottsmisstanken

behandlas för annat ändamål än arkivering endast under förutsättning att

1. den misstänkta enligt förundersökningsledarens bedömning fortfarande är skaligen misstänkt för brottet och

2. uppgifterna behövs för att förundersökningen skall kunna tas upp på nytt.

11 § Om åtal mot en person har lagts ned eller om denne genom lagakraftvunnen dom har frikants får uppgifter om brottsmisstanken behandlas för annat ändamål än arkivering endast

1. om förundersökningen tas upp på nytt eller

2. för provning av ett särskilt rättsmedel enligt 58 kap. rättegångsbalken.

12 § Bestämmelserna i 10 och 11 §§ gäller inte för Sakerhetspolisen.

Gallring

13 § Uppgifter som inte längre behövs för sitt ändamål skall gallras om inte annat anges i denna lag. Detta gäller dock inte uppgifter i en förundersökning.

Regeringen, eller den myndighet regeringen bestämmer, får meddela föreskrifter om att uppgifter får bevaras för historiska, statistiska och vetenskapliga ändamål.

Kriminalunderrättelseverksamhet

14 § I kriminalunderrättelseverksamhet får personuppgifter behandlas endast om

1. en särskild undersökning har inletts under ledning av Rikspolisstyrelsen eller en polismyndighet och

2. det finns anledning att anta att allvarlig brottslighet har utövats eller kan komma att utövas.

Uppgifter om en enskild person som det inte finns någon misstanke mot skall förses med en upplysning om detta förhållande.

Personuppgifter får också behandlas i kriminalunderrättelse-register i enlighet med 17-21 §§.

15 § Polismyndighetens eller Rikspolisstyrelsens beslut om behandling av personuppgifter enligt 14 § skall innehålla uppgifter om ändamålet med behandlingen och de villkor i övrigt som behövs för att förebygga otillbörligt intrång i de registrerades personliga integritet.

Rikspolisstyrelsen skall föra en förteckning över samtliga beslut om behandling av personuppgifter i kriminalunderrättelseverksamhet.

16 § Uppgifter som behandlas enligt 14 § skall gallras senast ett år efter det att beslutet om behandlingen av personuppgifter fattades. Om det är av särskild betydelse för att den särskilda undersökningen skall kunna avslutas får dock uppgifterna behandlas under längre tid.

Regeringen, eller den myndighet regeringen bestämmer, får meddela föreskrifter om att uppgifter får bevaras för historiska, statistiska och vetenskapliga ändamål.

Kriminalunderrattelseregister

Andamal

17 § Kriminalunderrattelseregister får foras endast för att

1. ge underlag för beslut om särskilda undersökningar avseende allvarlig brottslig verksamhet eller
2. underlätta tillgången till allmänna uppgifter med anknytning till underrattelseverksamhet.

18 § Kriminalunderrattelseregister får foras av Rikspolisstyrelsen eller av en polismyndighet. Den myndighet som för registret är person-uppgiftsansvarig för behandlingen av personuppgifter i registret.

Innehåll

19 § Ett kriminalunderrattelseregister får innehålla uppgifter som kan hänföras till en enskild person endast om uppgifterna ger anledning att anta att allvarlig brottslig verksamhet utövas eller kan komma att utövas och den som avses med uppgifterna skaligen kan misstänkas för att ha utövat eller komma att utöva den allvarliga brottsliga verksamheten.

Uppgifter om transportmedel eller varor som kan antas ha samband med allvarlig brottslig verksamhet eller om hjälpmedel som kan antas ha använts i samband med sådan verksamhet får registreras, även om uppgifterna kan hänföras till en enskild person som det inte finns någon misstanke mot. Uppgifterna skall därvid förses med upplysning om att det inte finns någon misstanke mot denne.

20 § Ett kriminalunderrattelseregister får endast innehålla

1. upplysningar om varifrån den registrerade uppgiften kommer och om uppgiftslämnarens trovärdighet,
2. identifieringsuppgifter,
3. uppgifter om särskilda bestående fysiska kännetecken,
4. de omständigheter och handlingar som ger anledning att anta att den registrerade utövat eller kan komma att utöva allvarlig brottslig verksamhet,
5. uppgifter om varor, brottshjälpmedel och transportmedel,
6. ärendenummer och
7. hänvisning till en särskild undersökning där uppgifter om den registrerade behandlas och till register som förs av polis-, skatte- eller tullmyndighet i vilket uppgifter om den registrerade förekommer. Lag (1999:96).

Gallring

21 § Uppgifterna i ett kriminalunderrattelseregister om en registrerad person skall gallras senast tre år efter det att uppgifter om att denne skaligen kan misstänkas för att ha utövat eller komma att utöva allvarlig brottslig verksamhet senast infördes. Om en särskild undersökning som rör en registrerad person har inletts, får dock uppgifterna stå kvar till dess att undersökningen har avslutats.

Regeringen, eller den myndighet som regeringen bestämmer, får meddela föreskrifter om att uppgifter får bevaras för historiska, statistiska och vetenskapliga ändamål.

Register med uppgifter om DNA-analyser i brottmal

Andamal

22 § Uppgifter om resultat av DNA-analyser får behandlas endast för att underlätta identifiering av personer i samband med utredning av brott. Rikspolisstyrelsen får föra register (DNA-register och sparregister) i enlighet med 23-27 §§ över de uppgifter som behandlas.

Sadana uppgifter som avses i första stycket får även behandlas i förundersökningar och särskilda undersökningar.

DNA-register

23 § Ett DNA-register får innehålla uppgifter om resultatet av DNA-analyser som har gjorts under utredning av ett brott och som avser personer som har dömts för

1. ett sådant brott mot en persons liv eller hälsa, personliga integritet eller säkerhet som avses i 3, 4, 6, 8, 12 eller 17 kap. brottsbalken, om brottet kan leda till fängelse i mer än två år,
2. ett allmänfarligt brott som avses i 13 kap. brottsbalken, om brottet kan leda till fängelse i mer än två år eller
3. försök, förberedelse, stämpling, anstiftan eller medhjälp till ett sådant brott som avses i 1 eller 2.

24 § Registreringen av ett analysresultat skall begränsas till uppgifter som ger information om den registrerades identitet. Analysresultat som kan ge upplysning om den registrerades personliga egenskaper får inte registreras.

Utöver vad som sägs i första stycket får DNA-registret endast innehålla upplysningar som visar i vilket ärende analysen har gjorts och vem analysen avser.

Sparregister

25 § Ett sparregister får innehålla uppgifter om DNA-analyser som har gjorts under utredning av brott och som inte kan hänföras till en identifierbar person. Utöver uppgifter om analysresultat får ett sparregister endast innehålla upplysningar som visar i vilket ärende analysen har gjorts.

26 § Uppgifter i sparregister får endast jämföras med analysresultat

1. som inte kan hänföras till en identifierbar person,
2. som finns i DNA-registret eller
3. som kan hänföras till en person som är misstänkt för brott.

Gallring

27 § Uppgifter i DNA-registret skall gallras senast när uppgifterna om den registrerade gallras ur belastningsregistret enligt lagen (1998:620) om belastningsregister.

Uppgifter i sparregister skall gallras senast trettio år efter registreringen.

Prover från personer som inte är misstänkta för brott

28 § Om det i samband med utredning av ett brott har tagits ett prov för DNA-analys från någon som inte är misstänkt för brottet får provet inte användas för något annat ändamål än det

for vilket det togs. Ett sadant prov far inte heller sparas efter det att malet slutligt har avgjorts.

Fingeravtrycks- och signalementsregister

Andamal

29 § For att underlatta identifiering av personer i samband med brott far Rikspolisstyrelsen behandla uppgifter i fingeravtrycks- och signalementsregister. Ett sadant register far användas for identifiering av okanda personer aven i andra fall.

Sadana uppgifter som avses i forsta stycket far aven behandlas i forundersokningar och sarskilda undersokningar.

Innehall

30 § Fingeravtrycks- och signalementsregister far endast innehalla uppgifter om den som ar misstankt eller domd for brott eller som har fatt lamna fingeravtryck enligt 19 § lagen (1991:572) om sarskild utlanningskontroll. I ett sadant register far endast antecknas uppgifter om

1. fingeravtryck,
2. signalement,
3. identifieringsuppgifter och
4. arendenummer.

Gallring

31 § Uppgifter i fingeravtrycks eller signalementsregister om en misstankt person skall gallras nar forundersokning eller atal mot personen laggs ned eller nar atal ogillas. Uppgifterna far dock bevaras langre om andra uppgifter om den registrerade skall behandlas med stod av 10 eller 11 §. Nar dessa uppgifter gallras skall aven uppgifter i fingeravtrycks- och signalementsregister gallras.

Om den registrerade doms skall uppgifterna i registret gallras senast vid den tidpunkt da uppgifterna gallras ur belastningsregistret enligt lagen (1998:620) om belastningsregister.

Regeringen far meddela foreskrifter om gallring av uppgifter om den som har lamnat fingeravtryck enligt lagen (1991:572) om sarskild utlanningskontroll.

SAPO-registret

Andamal

32 § Sakerhetspolisen skall fora ett register (SAPO-registret) som har till andamal

1. att underlatta spaning i syfte att forebygga och avsloja brott mot rikets sakerhet,
2. att underlatta spaning i syfte att bekampa terrorism och
3. att utgora underlag for registerkontroll enligt sakerhetsskyddslagen (1996:627).

Sakerhetspolisen ar personuppgiftsansvarig for behandlingen av personuppgifter i registret.

Innehall

33 § SAPO-registret får innehålla uppgifter som kan hänföras till en enskild person endast

1. om den uppgiften gäller kan misstankas för att ha utövat eller komma att utöva brottslig verksamhet som innefattar hot mot rikets säkerhet eller terrorism,
2. om personen har undergått registerkontroll enligt säkerhetsskyddslagen (1996:627) eller
3. om det med hänsyn till registrets ändamål annars finns särskilda skäl till det.

Av registret skall framgå på vilken grund registrering skett.

Regeringen får meddela närmare föreskrifter om vilka personuppgifter som får registreras.

34 § SAPO-registret får endast innehålla

1. identifieringsuppgifter,
2. uppgifter om grunden för registrering och
3. hänvisning till de ärenden där uppgifter om den registrerade behandlas.

Gallring

35 § Uppgifter som registrerats enligt 33 § 1 eller 3 skall gallras senast tio år efter det att en sådan uppgift om personen som kan föranleda registrering senast infördes. Om det finns särskilda skäl får dock uppgifterna stå kvar under längre tid.

Regeringen, eller den myndighet som regeringen bestämmer, får meddela föreskrifter om att uppgifter får bevaras för historiska, statistiska och vetenskapliga ändamål.

Belastningsregister och misstankeregister

36 § Om skyldigheten för Rikspolisstyrelsen att föra belastnings- och misstankeregister finns bestämmelser i lagen (1998:620) om belastningsregister och i lagen (1998:621) om misstankeregister.

Det får inte föras något annat rikstäckande register över brottmålsdomar än belastningsregistret.

Övergångsbestämmelser

1998:622

1. Denna lag träder i kraft den dag regeringen bestämmer.
2. För de personregister som den 24 oktober 1998 förs med Datainspektionens tillstånd gäller bestämmelserna i datalagen (1973:289) till och med den 30 september 2001. För ett sådant register skall dock 6-8 §§ gälla från ikraftträdandet.

Ny sökning

Sökresultat
