



# LAWS OF MALAYSIA

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REPRINT

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**Act 699**

## **DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION ACT 2009**

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**DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION  
ACT 2009**

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# **LAWS OF MALAYSIA**

## **Act 699**

### **DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION ACT 2009**

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## LAWS OF MALAYSIA

### Act 699

## DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION ACT 2009

An Act to provide for the establishment of a Forensic DNA Databank Malaysia, the taking of DNA samples, forensic DNA analysis, the use of DNA profiles and information in relation thereto, and for matters connected therewith.

[1 September 2012, P.U. (B) 271/2012]

**ENACTED** by the Parliament of Malaysia as follows:

### PART I

#### PRELIMINARY

#### **Short title and commencement**

**1.** (1) This Act may be cited as the Deoxyribonucleic Acid (DNA) Identification Act 2009.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

#### **Interpretation**

**2.** In this Act, unless the context otherwise requires—

“chemist” means any chemist attached to the Chemistry Department of Malaysia, and includes any science officer attached to the Chemistry Department of Malaysia;

“forensic DNA analysis” means any analysis carried out for the purpose of determining a person’s identity;

“DNA Databank” means the Forensic DNA Databank Malaysia established under section 3;

“prescribed” means prescribed by the Minister by regulations made under this Act;

“DNA” means deoxyribonucleic acid;

“appropriate consent” means—

- (a) in relation to a person who is under the age of eighteen years, the consent in writing of his parent or guardian;
- (b) in relation to a person who has attained the age of eighteen years, the consent in writing of that person; or
- (c) in relation to a person in whom there is a condition of arrested or incomplete development of mind or body whether such condition arises from inherent causes or is induced by disease or injury and who is incapable of understanding the general nature and effect of a forensic DNA analysis or is incapable of indicating whether he consents or does not consent to give his intimate sample or non-intimate sample, the consent in writing of his parent or guardian;

“offence” means any act or omission punishable by any law for the time being in force;

“Head of DNA Databank” means the Head of Forensic DNA Databank Malaysia appointed under section 7;

“Minister” means the Minister charged with the responsibility for internal security;

“detainee” means a person arrested and detained under the \*Emergency (Public Order and Prevention of Crime) Ordinance 1969 [*Ord. 5/1969*] or the Dangerous Drugs (Special Preventive Measures) Act 1985 [*Act 316*];

“authorized officer” means any police officer not below the rank of Deputy Superintendent of Police;

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\*NOTE—Emergency (Public Order and Prevention of Crime) Ordinance 1969 [*Ord. 5/1969*] ceased to have effect on 21 June 2012 pursuant to Clause (7) Article 150 of the Federal Constitution.

“government medical officer” means a registered medical practitioner in the public service and includes a registered medical practitioner in any teaching hospital of a university established under the Universities and University Colleges Act 1971 [*Act 30*];

“police officer” means any member of the Royal Malaysia Police;

“drug dependant” means a person who is subject to such order or decision made pursuant to the Drug Dependants (Treatment and Rehabilitation) Act 1983 [*Act 283*];

“DNA profile” means genetic information derived from a forensic DNA analysis;

“non-intimate sample” means—

- (a) a sample of hair other than the pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample; or
- (d) saliva;

“intimate sample” means—

- (a) a sample of blood, semen or any other tissue or fluid taken from a person’s body, urine or pubic hair; or
- (b) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifice other than the mouth.

## PART II

### FORENSIC DNA DATABANK MALAYSIA

#### **Establishment of DNA Databank**

**3. (1)** A DNA databank by the name of “Forensic DNA Databank Malaysia” is established.

(2) The DNA Databank shall be under the management, control and supervision of the Head of DNA Databank.

(3) The DNA Databank shall consist of the following indices:

- (a) a crime scene index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample that is found—
  - (i) on any thing or at any place where an offence was committed;
  - (ii) on or within the body of a victim of an offence;
  - (iii) on any thing worn or carried by the victim of an offence at the time when the offence was committed; or
  - (iv) on or within the body of any person reasonably suspected of having committed an offence;
- (b) a suspected persons index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from persons reasonably suspected of having committed an offence and includes suspects who have not been charged in any court for any offence;
- (c) a convicted offenders index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from persons convicted of any offence under any written law;
- (d) a detainee index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a detainee;
- (e) a drug dependants index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a drug dependant;



- (f) a missing persons index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from—
  - (i) the body or parts of the body of an unidentified deceased person;
  - (ii) any thing worn or carried by a missing person;  
or
  - (iii) the next of kin of a missing person if so required;  
and
- (g) a voluntary index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a person who volunteers to submit the same for the purpose of storage of the DNA information in the DNA Databank and for such other purposes referred to in paragraph 15(2)(a).

### **Objectives of DNA Databank**

**4.** (1) The primary objective of the DNA Databank is to keep and maintain the indices referred to in subsection 3(3) for the purpose of human identification in relation to forensic investigation.

(2) In addition to subsection (1), the DNA profiles and any information in relation thereto kept and maintained in the DNA Databank may be used in assisting—

- (a) the recovery or identification of human remains from a disaster or for humanitarian purposes; and
- (b) the identification of living or deceased persons.

### **Function of DNA Databank**

**5.** The function of the DNA Databank is to store DNA profiles and any information in relation thereto from any forensic DNA analysis carried out by the Chemistry Department of Malaysia or Forensic Laboratory of the Royal Malaysia Police, or any agency or body as may be designated by the Minister from time to time by order published in the *Gazette*.

**Power of Minister to designate agency or body to carry out forensic DNA analysis**

**6.** (1) The power of the Minister to designate any agency or body to carry out forensic DNA analysis under section 5 shall only be exercised in the event the Chemistry Department of Malaysia or Forensic Laboratory of the Royal Malaysia Police is unable to carry out any forensic DNA analysis.

(2) The Minister may, in the order referred to in section 5, specify that the forensic DNA analysis to be carried out by the agency or body so designated shall only be for the purposes mentioned in subsection 4(2) subject to such terms and conditions as he may impose.

**PART III****HEAD OF DNA DATABANK, DEPUTY HEAD OF DNA  
DATABANK AND DNA DATABANK OFFICERS****Appointment of Head of DNA Databank, Deputy Head and other officers**

**7.** (1) The Minister shall appoint a public officer who shall have the qualification and experience in DNA science as Head of DNA Databank for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) The Minister shall appoint a public officer who shall have the qualification and experience in DNA science as Deputy Head of DNA Databank as may be necessary for the purposes of this Act who shall be subject to the control and direction of the Head of DNA Databank and may exercise the powers and perform the functions of the Head of DNA Databank under this Act.

(3) The Minister shall appoint such numbers of DNA Databank officers as may be necessary for carrying out the purposes of this Act from amongst public officers who shall be subject to the control, direction and supervision of the Head of DNA Databank.

(4) The Head of DNA Databank may in writing, subject to such conditions, limitations or restrictions as he thinks fit to impose, delegate all or any of his powers or functions under this Act to the Deputy Head of DNA Databank or to DNA Databank officers.

(5) A delegation under subsection (4) may be revoked at any time by the Head of DNA Databank and does not prevent the Head of DNA Databank from exercising the powers or performing the functions so delegated under that subsection.

### **Functions and powers of the Head of DNA Databank**

**8.** (1) The Head of DNA Databank shall have the following functions:

- (a) to be responsible for the general conduct, administration and management of the DNA Databank;
- (b) to establish mechanisms to facilitate the collection, storage and dissemination of data in connection with DNA profiles and any information in relation thereto stored in the DNA Databank;
- (c) to ensure that DNA profiles and any information in relation thereto are securely stored and remain confidential;
- (d) to store and dispose of the intimate sample and non-intimate sample taken for the purposes of forensic DNA analysis in accordance with the provisions of this Act and as prescribed;
- (e) to co-operate with foreign law enforcement agency in accordance with the provisions of this Act; and
- (f) to carry out any other functions conferred by or under this Act and to perform any other functions that are supplemental, incidental, or consequential to any of the functions specified in this section or in furtherance of the objectives of the DNA Databank.

(2) The Head of DNA Databank shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of his functions under this Act.

**Rectification of particulars in DNA profile and information**

**9.** (1) The Head of DNA Databank shall be entitled to rectify the particulars in the DNA profiles and any information in relation thereto if—

- (a) a clerical error has occurred; and
- (b) sufficient evidence is produced to satisfy him that the entry made is incorrect,

and on making the rectification he shall, where necessary, issue to the person entitled to the information derived from the analysis of sample taken for him, the particulars so rectified.

(2) The powers under this section shall be exercised by the Head of DNA Databank alone.

(3) Any rectification made pursuant to this section shall not be construed as an act of tampering, abetting or attempting to tamper with any DNA profile or any information in relation thereto contained in the DNA Databank mentioned in section 21.

**Power of Minister to give directions**

**10.** The Minister may give the Head of DNA Databank directions of a general character consistent with the provisions of this Act relating to the performance of the functions and the exercise of the powers of the Head of DNA Databank and the Head of DNA Databank shall give effect to such directions.

**Access of DNA profile or information**

**11.** (1) The access to, a communication or use of DNA profiles or any information in relation thereto stored in the DNA Databank by the Head of DNA Databank, Deputy Head of DNA Databank, DNA Databank officers and any chemist shall only for the purposes of—

- (a) forensic comparison with any other DNA profiles or information in the course of an investigation of any offence conducted by any enforcement agency;

- (b) administering the DNA Databank; or
- (c) making the information available to the person to whom the information relates.

(2) For the avoidance of doubt, the access to, a communication or use of DNA profiles or any information in relation thereto under subsection (1) by a chemist shall only be for the purpose mentioned in paragraph (a) of that subsection.

#### PART IV

##### TAKING, STORING, DISPOSING OF INTIMATE AND NON-INTIMATE SAMPLES AND REMOVAL OF DNA PROFILE AND INFORMATION

##### **Taking of intimate sample**

**12.** (1) The procedures for the taking of an intimate sample of any person under this Act shall be in accordance with the provisions of this section and as prescribed.

(2) An intimate sample of—

- (a) a person reasonably suspected of having committed an offence;
- (b) a detainee; or
- (c) a drug dependant,

may be taken for forensic DNA analysis only if—

- (A) an authorized officer authorizes it to be taken; and
- (B) an appropriate consent in the prescribed form is given by the person from whom an intimate sample is to be taken.

(3) Subject to an appropriate consent being given under subparagraph (2)(B), an authorized officer shall only give his authorization under subparagraph (2)(A) if—

(a) he has reasonable grounds for—

(i) suspecting that the person from whom the intimate sample is to be taken has committed an offence; and

(ii) believing that the sample will tend to confirm or disprove the commission of the offence by that person;

(b) an arrest has been effected on or a detention order has been made against a detainee; or

(c) an order or a decision has been made pursuant to the Drug Dependents (Treatment and Rehabilitation) Act 1983 against a drug dependant.

(4) An authorized officer—

(a) shall give his authorization under subsection (3) in writing; or

(b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as may be possible.

(5) A person from whom an intimate sample is taken shall be entitled to the information derived from the analysis of the sample taken from him.

(6) An intimate sample shall only be taken by a government medical officer.

### **Taking of non-intimate sample**

**13.** (1) The procedures for the taking of a non-intimate sample of any person under this Act shall be in accordance with the provisions of this section and as prescribed.

(2) A non-intimate sample of—

- (a) a person reasonably suspected of having committed an offence;
- (b) a detainee; or
- (c) a drug dependant,

may be taken only if an authorized officer authorizes it to be taken.

(3) An authorized officer shall only give his authorization under subsection (2) if—

- (a) he has reasonable grounds for—
  - (i) suspecting that the person from whom the non-intimate sample is to be taken has committed an offence; and
  - (ii) believing that the sample will tend to confirm or disprove the commission of the offence by that person;
- (b) an arrest has been effected on or a detention order has been made against a detainee; or
- (c) an order or a decision has been made pursuant to the Drug Dependants (Treatment and Rehabilitation) Act 1983 against a drug dependant.

(4) An authorized officer—

- (a) shall give his authorization under subsection (2) in writing; or
- (b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as possible.

(5) The person from whom a non-intimate sample is taken shall be entitled to the information derived from the analysis of the sample taken from him.

(6) A non-intimate sample shall only be taken by —

(a) a government medical officer; or

(b) a police officer or a chemist.

(7) If a person from whom a non-intimate sample is to be taken under this Act refuses to give the sample or refuses to allow the sample to be taken from him without good cause or the sample cannot be obtained despite all reasonable efforts taken, that person may be taken before a magistrate and the magistrate may, if satisfied that there is reasonable cause to believe that the sample tends to confirm or disprove the commission of an offence by that person, order that person to provide his non-intimate sample.

### **Sample given voluntarily**

**14.** (1) Any person, other than the person whose intimate sample or non-intimate sample may be taken under sections 12 and 13, may voluntarily give an appropriate consent in the prescribed form to a police officer not below the rank of Deputy Superintendent of Police for the taking of his intimate sample or non-intimate sample.

(2) Where an appropriate consent is given under subsection (1), a police officer not below the rank of Deputy Superintendent of Police shall, before the taking of the intimate sample or non-intimate sample, inform the person from whom the sample is to be taken —

(a) that the DNA profiles and any information in relation thereto derived from the intimate sample or non-intimate sample may be stored in the DNA Databank and may be used for the purposes of forensic DNA analysis, police inquiry and for such purposes referred to in section 11;

(b) that he may make a request to a police officer for an access to the information; and

(c) that he may at any time withdraw his consent given under subsection (1).



### **DNA sample of prisoner**

**15.** An intimate sample or a non-intimate sample may be taken for forensic DNA analysis from any person who is serving his term of imprisonment in connection with an offence of which he has been convicted.

### **Storage and disposal of intimate and non-intimate samples**

**16.** (1) The Head of DNA Databank shall safely and securely store all intimate samples and non-intimate samples that are collected for the purpose of forensic DNA analysis, the portions of the samples that the Head of DNA Databank consider appropriate and without delay destroy any remaining portions.

(2) The procedures for the storage and disposal of an intimate sample and a non-intimate sample shall be as prescribed.

### **Removal of DNA profile and information from suspected persons index**

**17.** Where an intimate sample or a non-intimate sample has been taken in accordance with this Act from a person reasonably suspected of having committed an offence and—

- (a) investigations reveal that he was not involved in the commission of any offence;
- (b) the charge against him in respect of any offence is withdrawn;
- (c) he is discharged by a court of an offence with which he has been charged, at trial or on appeal;
- (d) he is acquitted of an offence with which he has been charged, at trial or on appeal; or

- (e) he is not charged in any court for any offence within a period of one year from the date of taking of such sample from him,

the Head of DNA Databank shall, within six months of so being notified by the Officer in Charge of a Police District of the fact referred to in paragraph (a), (b), (c), (d), or (e), remove the DNA profile and any information in relation thereto of such person from the DNA Databank.

## PART V

### OFFENCES

#### **Offence of tampering, abetting or attempting to tamper with sample**

**18.** (1) A person commits an offence if he tampers or causes to be tampered with any intimate sample or non-intimate sample taken for the purposes of this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

(3) Any person who abets the commission of or who attempts to commit the offence under this section shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for that offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

#### **Unauthorized use or communication of DNA profile or information**

**19.** (1) No person who receives a DNA profile for entry in the DNA Databank or who has access to information contained in the DNA Databank shall, except in accordance with sections 11 and 22, use or communicate such DNA profile or any information in relation thereto to be used or communicated other than for the purpose of this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

### **Obligation of secrecy**

**20.** (1) The Head of DNA Databank, Deputy Head of DNA Databank and DNA Databank officers or any person who for any reason, has by any means access to any data, record, book, register, correspondence, document whatsoever, or material or information, relating to the DNA profiles and any information in relation thereto in the DNA Databank which he has acquired in the performance of his functions or the exercise of his powers, shall not give, divulge, reveal, publish or otherwise disclose to any person, such document, material or information unless the disclosure is required or authorized—

(a) under this Act or regulations made under this Act;

(b) under any written law;

(c) by any court; or

(d) for the performance of his functions or the exercise of his powers under this Act or regulations made under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

### **Offence of tampering, abetting or attempting to tamper with DNA profile or information**

**21.** (1) A person commits an offence if he tampers or causes to be tampered with any DNA profile or any information in relation thereto in the possession, custody or control of the DNA Databank.

(2) For the purpose of this section, tampering with any DNA profile or any information in relation thereto includes the following:

- (a) such DNA profile or any information in relation thereto is altered or erased;
- (b) any new DNA profile or any information in relation thereto is introduced or added to such DNA profile or any information in relation thereto; or
- (c) any event occurs which impairs the ability of the Head of DNA Databank, the Deputy Head of DNA Databank or DNA Databank officers to have access to such DNA profiles or any information in relation thereto.

(3) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

(4) Any person who abets the commission of or who attempts to commit the offence under this section shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for that offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

## PART VI

### GENERAL

#### **Cooperation with foreign law enforcement agency**

**22.** (1) The Head of DNA Databank may, upon request by a foreign law enforcement agency, compare a DNA profile received from the foreign law enforcement agency with the DNA profiles in the DNA Databank in order to determine whether such DNA profile is already contained in the DNA Databank and communicate any relevant information to the foreign law enforcement agency.

(2) The Head of DNA Databank may, upon a request by a foreign law enforcement agency in the course of an investigation of an offence or a prosecution of a criminal offence in that foreign state, communicate a DNA profile contained in the DNA Databank to that foreign law enforcement agency.

(3) For the purposes of this section, “foreign law enforcement agency” means the law enforcement agency of a foreign state and includes an international organization established by the government of states or an international organization.

### **Protection against any legal proceedings**

**23.** No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

- (a) the Minister;
- (b) the Head of DNA Databank;
- (c) the Deputy Head of DNA Databank;
- (d) DNA Databank officers;
- (e) a government medical officer; or
- (f) a chemist,

in respect of any act or omission done by him in good faith in carrying out his powers, functions and responsibilities under this Act in such capacity.

### **Regulations**

**24.** (1) The Minister may make regulations as may be necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made—

- (a) to prescribe the procedures in taking and disposing of intimate sample and non-intimate sample;
- (b) to prescribe any form for the purpose of this Act;
- (c) to regulate the management, administration and control of the DNA Databank; and
- (d) to provide for any matter which under this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed.

(3) Any regulations made under this Act shall be laid before the Dewan Rakyat as soon as possible after they are made and if the Dewan Rakyat is not then sitting, at the sitting of the following meeting of the Dewan Rakyat.

### **Savings and transitional**

**25.** Any existing DNA profile and any information in relation thereto kept and maintained by the Chemistry Department of Malaysia or Royal Malaysia Police, immediately before the coming into operation of this Act shall, on the coming into operation of this Act, be deemed to have been kept and maintained in and to form part of the DNA Databank established under this Act in accordance with indices applying.

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**LAWS OF MALAYSIA****Act 699****DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION  
ACT 2009****LIST OF AMENDMENTS**

Amending law

Short title

In force from

— NIL —

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**LAWS OF MALAYSIA**

**Act 699**

**DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION  
ACT 2009**

**LIST OF SECTIONS AMENDED**

| Section | Amending authority | In force from |
|---------|--------------------|---------------|
|---------|--------------------|---------------|

— NIL —

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