

Statutes of the Republic of Korea
ACT ON USE AND PROTECTION OF DNA IDENTIFICATION INFORMATION

Act No. 9944, Jan. 25, 2010
Amended by Act No. 10258, Apr. 15, 2010

Article 1 (Purpose)

The purpose of this Act is to contribute to investigations and prevention of crimes and the protection of citizens' rights and interests by providing for matters necessary for the collection, use, and protection of DNA identification information.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

1. The term "DNA" refers to Deoxyribonucleic Acid, a chemical substance containing information about the life phenomena of each living organism;
2. The term "DNA sample" means a thing subject to DNA identification, such as blood, saliva, hair, or oral mucosa of an individual;
3. The term "DNA identification" means acquiring DNA identification information by examining and analyzing a specific part of DNA base sequence, not containing genetic information, for the purpose of identification of an individual;
4. The term "DNA identification information" means information acquired through a DNA identification process for the purpose of identification of an individual, which is indicated by a combination of serial numbers or codes;
5. The term "DNA identification database (hereinafter referred to as the "database")" means a collection of DNA identification information acquired pursuant to this Act and stored systematically in computers and other storage media, information in which can be accessed or searched individually.

Article 3 (State's Responsibilities)

- (1) The State shall prepare a policy necessary for maintaining the human dignity and privacy of each person from being invaded in the course of collecting DNA samples and managing and using DNA identification information.
- (2) DNA identification information stored in the database shall not include any information or personal data, other than matters necessary for identification of an individual.

Article 4 (Allocation of Administrative Works for DNA identification information)

- (1) The Prosecutor General shall have overall control over administrative works regarding DNA identification information acquired from DNA samples collected pursuant to Article 5.

(2) The Commissioner General of the National Policy Agency shall have overall control over administrative works regarding DNA identification information acquired from DNA samples collected pursuant to Articles 6 and 7.

(3) The Prosecutor General and the Commissioner General of the National Policy Agency may link their databases to operate them together.

Article 5 (Collection of DNA Samples from Prisoners, etc.)

(1) A public prosecutor (including a military prosecutor; the same shall apply hereinafter) may collect DNA sample from a person against whom a sentence of criminal punishment, a probation order under Article 59-2 of the Criminal Act, a sentence of medical treatment and custody under the Medical Treatment and Custody Act, or a decision of protective detention under Article 32 (1) 9 or 10 of the Juvenile Act is, or has been, finally and conclusively affirmed for any of the following crimes or a crime concurrent to any of the following crimes (hereinafter referred to as "prisoner"): Provided, That the foregoing shall not apply where DNA identification information from DNA samples collected pursuant to Article 6 has been already stored: <Amended by Act No. 10258, Apr. 15, 2010>

1. A crime under any provision of Articles 164, 165, 166 (1), 167 (1), and 174 (applicable only to an attempted crime under Article 164 (1), 165, or 166 (1)), among crimes of arson and fire caused by negligence in Part II, Chapter III of the Criminal Act;

2. A crime under any provision of Articles 250, 253, and 254 (excluding an attempted crime under Article 251 or 252), among crimes of homicide in Part II, Chapter XXIV of the Criminal Act;

3. A crime under any provision of Articles 287 through 289, 292 [excluding an attempted crime under Article 291 or 292 (applicable only to cases where a kidnapped or abducted person under Article 291 is taken over or concealed by another person)], 293, and 294 [excluding an attempted crime under Article 291 or 292 (applicable only to cases where a kidnapped or abducted person under Article 291 is taken over or concealed by another person)], among crimes of kidnapping and abduction in Part II, Chapter XXXI of the Criminal Act;

4. A crime under any provision of Articles 297 through 301, 301-2, 302, 303, and 305, among crimes of rape and molestation in Part II, Chapter XXXII of the Criminal Act;

5. A crime under any provision of Articles 330, 331, 332 (excluding by habitual offender of a crime under Article 331-2) through 342 (excluding an attempted crime under Article 329 or 331-2), among crimes of larceny and robbery in Part II, Chapter XXXVIII of the Criminal Act;

6. A crime under any provision of Articles 2 (excluding cases under paragraph (2) of the same Article), 3 through 5, and 6 (excluding an attempted crime under Article 2 (2)) of the Punishment of Violences, etc. Act;

7. A crime under any provision of Article 5-2 (1) through (6), Article 5-4 (1) through (3) and (5), and Articles 5-5, 5-8, 5-9, and 11 of the Act on the Aggravated Punishment, etc. of Specific Crimes;

8. A crime under any provision of Articles 3 through 11 and 14 (excluding an attempted crime under Article 13) of the Act on Special Cases concerning the Punishment, etc. of Victims of Sexual Crimes;

9. A crime under any provision of Articles 58 through 61 of the Act on the Control of Narcotics, etc.;

10. A crime under any provision of Articles 7, 9, 10, and 11 (excluding cases under paragraph (3) of the same Article) of the Act on the Protection of Children and Juveniles from Sexual Abuse;

11. A crime under any provision of Articles 53 (1), 59 (1), 66, 67, and 82 through 85 of the Military Criminal Act.

(2) If necessary, a public prosecutor may entrust the head of a correctional institution, a detention center, or its branch, a juvenile reformatory, a medical treatment and custody facility, or similar (hereinafter referred to as "custody facility") with collection of DNA samples.

Article 6 (Collection of DNA Samples from Detained Suspects, etc.)

A public prosecutor or a judicial police officer (including a military judicial police officer; the same shall apply hereinafter) may collect DNA samples from a suspect detained for a crime under any subparagraph of Article 5 (1) or a crime concurrent to any of the aforesaid crimes or a person detained for medical treatment and custody pursuant to the Medical Treatment and Custody Act (hereinafter referred to as "detained suspect"): Provided, That the foregoing shall not apply where DNA identification information from DNA samples collected pursuant to Article 5 has been already stored.

Article 7 (Collection of DNA Samples from Crime Scenes, etc.)

(1) A public prosecutor or a judicial police officer may collect DNA samples from any of the following (hereinafter referred to as "crime scene"):

1. A thing discovered at a crime scene;
2. A thing discovered from the body of a victim of crime;
3. A thing discovered from an article that a victim of crime wore or carried at the time he/she was victimized;
4. A thing discovered from the body of a person involved in perpetration of a crime, from the exterior or interior of an article possessed by such person, or at a place related to perpetration for a crime.

(2) DNA identification information acquired from DNA samples collected pursuant to paragraph (1) may be stored, only where the identity has not been discovered.

Article 8 (Warrant to Collect DNA Samples)

(1) A public prosecutor may collect DNA samples from a person subject to collection of DNA samples under Article 5 or 6 with a warrant issued by the competent district court judge (including a military judge; the same shall apply hereinafter) at the request of the public prosecutor.

(2) A judicial police officer may collect DNA samples from a person subject to collection of DNA samples under Article 6 with a warrant issued by the competent district court judge at the request of the public prosecutor with whom the judicial police officer files an application for the warrant.

(3) If a person subject to collection of DNA samples under paragraph (1) or (2) consents to the collection, DNA samples may be collected without a warrant. In such cases, a notice that the person may refuse the collection shall be given in advance, and consent thereto shall be obtained in writing.

(4) A request for a warrant to collect DNA samples under paragraph (1) or (2) (hereinafter referred to as "warrant to collect DNA samples") shall be made in writing, describing the name and address of the person subject to the collection, reasons for the request, types of samples to be collected, the method and place of collection, etc. and shall be accompanied by documents supporting the reasons for the request.

(5) Each warrant to collect DNA samples shall contain the name and address of the person subject to the collection, types of samples to be collected, the method and place of collection, the effective period, and a statement that, if the effective period lapses, the warrant shall be unenforceable and thus shall be returned, and shall bear the signature and seal affixed by the competent district court judge.

(6) A warrant to collect DNA samples shall be executed by a judicial police officer under the competent public prosecutor's command: Provided, That a warrant to collect DNA samples of a person who is in the custody of a custody facility may be executed by a public official who works for the custody facility under the competent public prosecutor.

(7) A public prosecutor may directly command the execution of a warrant to collect DNA samples at a place outside his/her jurisdiction or entrust a public prosecutor having jurisdiction over the place with the command of execution.

(8) Whenever DNA samples are collected, a notice of grounds on which such DNA samples are collected, types of samples to be collected, and the method of collection shall be given in advance to the person subject to the collection.

(9) As to the collection of DNA samples with a warrant to collect DNA samples, Articles 116, 118, 124 through 126, and 131 of the Criminal Procedure Act shall apply mutatis mutandis.

Article 9 (Methods of Collecting DNA Samples)

(1) Whenever DNA samples are collected pursuant to Article 5 or 6, a method that minimizes bodily harm or violation of dignity to the person subject to the collection, such as collecting samples from oral mucosa, shall be used.

(2) Necessary matters concerning the methods of collection and management of DNA samples shall be prescribed by Presidential Decree.

Article 10 (Storage of DNA Identification Information, etc.)

(1) The Prosecutor General or the Commissioner General of the National Policy Agency may delegate or entrust a person or an agency specified by Presidential Decree (hereinafter referred to as the "person in charge of DNA identification information") with the following works:

1. Identification of DNA samples collected pursuant to Articles 5 through 9 and storage of such DNA identification information in the database;

2. Management of the database.

(2) Necessary matters concerning delegation or entrustment to persons in charge of DNA identification, DNA identification works, and storage and management of DNA identification information shall be prescribed by Presidential Decree.

Article 11 (Search and Reply of DNA Identification Information)

(1) The person in charge of DNA identification information may search DNA identification information or reply to an inquiry with results of search in any of the following cases:

1. When new DNA identification information is stored in the database;

2. When a public prosecutor or a judicial police officer requests for investigation of a crime or the identification of a person who died of unnatural cause;

3. When a court sends an inquiry of facts for a criminal case pending on trial;

4. When it is necessary for mutual verification between databases.

(2) When the person in charge of DNA identification information sends a reply of results of a search of DNA identification information pursuant to paragraph (1), he/she shall clearly state purposes of use, the person who prepared the reply, the name of the person who inquired, and the date and time of preparation of the reply.

(3) Necessary matters concerning procedures for search of DNA identification information and reply of results of search shall be prescribed by Presidential Decree.

Article 12 (Destruction of DNA Samples)

(1) When the person in charge of DNA identification information completes storing DNA identification information in the database, he/she shall destroy DNA samples collected pursuant to Article 5 or 6 and DNA extracted from such samples without delay.

(2) Necessary matters concerning the method of, and procedure for, destruction of DNA samples and DNA extracted therefrom shall be prescribed by Presidential Decree.

Article 13 (Erasure of DNA Identification Information)

(1) If a judgment for acquittal, exoneration, or dismissal of public prosecution or a decision of dismissal of public prosecution is finally and conclusively affirmed for a prisoner in a retrial, the person in charge of DNA identification information shall, ex officio or at the prisoner's request, erase DNA identification information collected pursuant to Article 5 and stored in the database.

(2) If any of the following events occurs to a detained suspect, the person in charge of DNA identification information shall, ex officio or at the suspect's request, erase DNA identification information collected pursuant to Article 6 and stored in the database:

1. If the public prosecutor makes a disposition of "cleared of suspicion" "not guilty" or "not prosecutable" or if the designation of the crime that the detained suspect allegedly perpetrated is changed from the designation of a crime under any subparagraph of Article 5 (1) to the designation of a crime not specified in any subparagraph of the aforesaid paragraph in the course of investigation or trial: Provided, That cases where the public prosecutor makes an independent demand for a disposition of medical treatment and custody pursuant to subparagraph 1 of Article 7 of the Medical Treatment and Custody Act, along with a disposition of "not guilty" shall be excluded herefrom;

2. If a judgment of acquittal, exoneration, or dismissal of public prosecution by a court or a decision of dismissal of public prosecution is finally and conclusively affirmed: Provided, That cases where a sentence of medical treatment and custody is imposed along with a judgment of acquittal shall be excluded herefrom;

3. If a judgment by a court of dismissal of an independent demand for a disposition of medical treatment and custody under subparagraph 1 of Article 7 of the Medical Treatment and Custody Act is finally and conclusively affirmed.

(3) If a prisoner or a detained suspect is dead, the person in charge of DNA identification information shall, ex officio or at the request of any of the deceased's relatives, erase DNA identification information collected pursuant to Article 5 or 6 and stored in the database:

(4) If it is no longer necessary to preserve and manage DNA identification information collected pursuant to Article 7 and stored in the database because the identify has been ascertained or due to any other reason, the person in charge of DNA identification information shall, ex officio or at the identified person's request, erase the DNA identification information.

(5) When the person in charge of DNA identification information erases DNA identification information pursuant to any provision of paragraphs (1) through (4), he/she shall notify the relevant person or the requesting person of the erasure within 30 days.

(6) Necessary matters concerning the method of, and procedure for, erasing DNA identification information and notification shall be prescribed by Presidential Decree.

Article 14 (Managing Committee of DNA Identification Information Database)

(1) The Managing Committee of DNA Identification Information Database (hereinafter referred to as the "Committee") shall be established under the jurisdiction of the Prime Minister in order to require the Committee to deliberate on the following matters regarding the management and operation of the database:

1. Matters concerning the collection, transportation, storage, and destruction of DNA samples;

2. Matters concerning the method of, and procedure for, DNA identification and the standardization of identification technology;

3. Matters concerning the description of DNA identification information and the storage and erasure of the database;

4. Other matters prescribed by Presidential Decree.

(2) The Committee shall be comprised of not less than seven, but not more than nine members, including one Chairperson;

(3) Committee members shall be commissioned by the Prime Minister from among the following persons, while the Chairperson shall be appointed by the Prime Minister from among committee members:

1. Grade-V or higher-ranking public officials (including public officials in general service, who are members of the Senior Executive Service) or persons who are, or have been, in an equivalent position in a public institution and who have experience in DNA-related work;

2. Persons who serve, or have served, as an adjunct or higher professor or with an equivalent position in a university or an officially recognized research institute and who have special knowledge and ample experience in research on bioscience or medicine;

3. Other persons who have ample knowledge and experience in ethics, social science, legal profession, or journalism.

(4) The term of office for each committee member shall be three years.

(5) If the Committee considers it necessary for deliberation on matters under subparagraphs of paragraph (1), it may request the Prosecutor General or the Commissioner General of the National Police Agency to submit relevant data, and may require the person in charge of DNA identification information to attend the Committee's meetings to hear his/her opinion.

(6) The Committee may present its opinion on matters, on which it has deliberated upon pursuant to subparagraphs of paragraph (1), to the Prosecutor General or the Commissioner General of the National Police Agency.

(7) Necessary matters concerning the organization and operation of the Committee shall be prescribed by Presidential Decree, in addition to matters provided for in paragraphs (1) through (6).

Article 15 (Prohibition against Use for any Purpose Other than Performance of Duties, etc.)

No person in charge of DNA identification information shall use DNA samples or DNA identification information acquired in the course of performance of his/her duties for any purpose, other than performance of his/her duties nor shall he/she provide or divulge such samples or information to another person.

Article 16 (Statutory Treatment as Public Officials for Application of Penal Provisions)

A person in charge of DNA identification information who is not a public official shall be deemed a public official for the purpose of applying penal provisions of the Criminal Act or any other Act to him/her.

Article 17 (Penal Provisions)

(1) A person who falsifies or alters DNA identification information shall be punished by imprisonment with prison labor for not more than seven years, or by a fine not exceeding 20 million won.

(2) A person who destroys, conceals, damages, or otherwise degrades the utility of, DNA samples collected pursuant to this Act shall be punished by imprisonment with prison labor for not more than five years, or by a fine not exceeding seven million won.

(3) A person who uses DNA samples or DNA identification information for any purpose, other than performance of his/her duties, in violation of Article 15 or provides or divulges such samples or information to another person shall be punished by imprisonment with prison labor for not more than three years, or by suspension of qualification for not more than five years.

(4) A person who falls under any of the following subparagraphs shall be punished by imprisonment with prison labor for not more than two years, or by a fine not exceeding five million won:

1. A person who inspects or acquires DNA identification information by fraud or other illegal means;

2. A person who uses DNA identification information replied pursuant to Article 11 for any purpose, other than performance of his/her duties or who provides or divulges such information to another person.

(5) A person in charge of DNA identification information shall be punished by imprisonment, with or without prison labor, for not more than one year or by suspension of qualification for not more than three years, if he/she fails to destroy DNA samples and DNA extracted therefrom or fails to erase DNA identification information, in violation of Article 12 or 13 without a justifiable ground.

ADDENDA <Act No. 9944, Jan. 25, 2010>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Article 2 (Applicability to Storage of DNA Identification Information of Prisoners and Detained Suspects)

(1) Article 5 shall also apply to a person who is in custody to serve a sentence of imprisonment, with or without prison labor, imposed and finally and conclusively affirmed for a crime under any subparagraph of Article 5 (1) or a crime concurrent to the aforesaid crime, or a person who is in the custody of a medical treatment and custody facility or a juvenile reformatory to serve a sentence of medical treatment and custody under the Medical Treatment and Custody Act or a decision of protective detention under Article 32 (1) 9 or 10 of the Juvenile Act, as at the time this Act enters into force.

(2) Article 6 shall also apply to a suspect detained for a crime under any subparagraph of Article 5 (1) or a crime concurrent to the aforesaid crime, or a person detained for medical treatment and custody under the Medical Treatment and Custody Act, as at the time this Act enters into force.

Article 3 (Applicability to Storage of DNA Identification Information at Crime Scenes)

Article 7 shall also apply to DNA identification information acquired at a crime scene and stored by a public prosecutor or a judicial police officer before this Act enters into force.

ADDENDA <Act No. 10258, Apr. 15, 2010>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

Articles 2 through 6 Omitted.

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