

Reprint
as at 14 July 2017



Criminal Investigations (Bodily Samples) Act 1995

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|----------------|------------------|
| Public Act | 1995 No 55 |
| Date of assent | 24 October 1995 |
| Commencement | see section 1(2) |

Act name: substituted, on 15 April 2004, by section 4(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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DNA profile databank

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An Act—

- (a) to make provision for the taking of bodily samples for use in criminal investigations; and**
- (b) to authorise—**
 - (i) the establishment of a databank of information derived from the analysis of bodily samples taken from certain persons; and**
 - (ii) the use of information from that databank in criminal investigations; and**
- (c) to provide for matters incidental thereto**

Title paragraph (a): amended, on 15 April 2004, by section 3 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Title paragraph (b)(i): amended, on 15 April 2004, by section 3 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

1 Short Title and commencement

- (1) This Act may be cited as the Criminal Investigations (Bodily Samples) Act 1995.
- (2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

Section 1(1): amended, on 15 April 2004, by section 4(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 1(2): this Act brought into force, on 12 August 1996, by the Criminal Investigations (Blood Samples) Act Commencement Order 1996 (SR 1996/189).

Part 1
Preliminary provisions

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
 - appeal period**, in relation to a conviction, means the period ending—
 - (a) when the time for bringing an appeal against the conviction expires, if no such appeal has been brought; or
 - (b) if an appeal against the conviction has been brought, when the appeal is finally determined or is withdrawn, whichever occurs first

approved agency means an agency approved under section 4B(1)(a)

blood sample means a fingerprick sample or a venous sample

bodily sample or **sample** means a blood sample or a buccal sample

buccal sample means a sample of epithelial cells from inside the mouth taken by a device, or provided by other means, approved for the purpose under section 4B(1)(b)

charged, in relation to a person, means that a charging document charging the person with an offence has been filed in the District Court (including in relation to proceedings in the Youth Court)

child means a person of or over the age of 10 years but under the age of 14 years

Commissioner means the Commissioner of Police

compulsion order means a suspect compulsion order or a juvenile compulsion order

conviction includes—

- (a) a finding, by the Youth Court, that a charge against a young person is proved; and
- (b) an acquittal on account of insanity; and
- (c) the dismissal of a charge on account of insanity; and
- (d) a finding that the person is unfit to stand trial;—

and **convicted** has a corresponding meaning

databank compulsion notice—

- (a) means a notice issued under section 39; and
- (b) includes—
 - (i) a databank compulsion notice that a Judge has varied, or included a condition on, under section 42, section 43, section 43A, or section 47; and
 - (ii) a databank compulsion notice in relation to which a Part 3 order has been made

databank compulsion notice hearing means a hearing requested under section 41

databank request means a request made pursuant to section 30

detained under a sentence of imprisonment has the meaning given to it by section 4A

District Court, in sections 6(2)(b)(vii), 7(b)(viii), 13(1), 14(1)(a), 15(1), 16(1), and 18(1) and (3)(b)(vii), includes the Youth Court if the suspect or respondent is subject to the Youth Court's jurisdiction

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

- (a) that is clearly identifiable as relating to that person; and
- (b) that is able to be compared with information obtained from an analysis (using the same technique) of another sample of genetic material for the

purpose of determining, with reasonable certainty, whether or not the other sample is from that person

DNA profile databank means a databank established pursuant to section 25

fingerprick sample means a sample of capillary blood taken, in accordance with normal medical procedures, from the tip of a finger or thumb

forensic comparison means the comparison of a DNA profile stored in a DNA profile databank with another DNA profile, where that comparison is undertaken for the purpose of confirming or disproving the involvement of any person in the commission of an offence

imprisonable offence means an offence punishable by a term of imprisonment; and includes an offence punishable by imprisonment for life

independent adult has the meaning given to it in section 2A

juvenile compulsion order means an order made under section 23

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

parent, in relation to a person who is under the age of 17 years,—

- (a) means a parent or guardian of that person; and
- (b) includes a step-parent of the person; but, if the person is under 18, only if the step-parent shares responsibility for the day-to-day care of the person with one of the person's parents; and
- (c) if no parent or guardian of that person can be found with reasonable diligence or is capable of consenting to the taking of a bodily sample from that person under this Act, includes a person in New Zealand who is acting in the place of a parent of that person

Part 2A request means a request made under section 24D

Part 2B temporary databank means a database maintained under section 24O

Part 3 order means an order made by a Judge requiring a bodily sample to be taken pursuant to a databank compulsion notice

prison officer means an officer as defined in section 3(1) of the Corrections Act 2004

relevant offence means—

- (a) an offence against any of the provisions listed in Part 1 of the Schedule;
or
- (b) an offence against any of the provisions listed in Part 2 of the Schedule;
or
- (ba) an offence against any of the provisions listed in Part 3 of the Schedule;
or
- (c) an attempt to commit an offence against any of the provisions listed in Part 1, 2, or 3 of the Schedule if the offence is not itself specified as an attempt; or
- (d) conspiring with any person to commit an offence against any of the provisions listed in Part 1, 2, or 3 of the Schedule if the offence is not itself specified as a conspiracy; or
- (e) an offence punishable by a term of imprisonment of 7 years or more; or
- (f) an attempt to commit an offence of the kind referred to in paragraph (e);
or
- (g) conspiring with any person to commit an offence of the kind referred to in paragraph (e)

respondent, in relation to an application for a compulsion order, means the person to whom the application relates

specified date means—

- (a) 30 June 2000; or
- (b) such later date (being not later than 30 June 2005) as may be specified for the purposes of sections 60 and 62 by the Governor-General by Order in Council,—

whichever is the later

suitably qualified person means, in relation to—

- (a) a blood sample,—
 - (i) a medical practitioner; or
 - (ii) a nurse; or
 - (iii) a medical technologist with a degree in medical laboratory science; or
 - (iv) a person trained in phlebotomy in accordance with the national standard for training phlebotomists adopted by the Association of Community Laboratories Incorporated;
- (b) a buccal sample,—
 - (i) a medical practitioner; or

- (ii) any person specified in paragraph (a)(ii) to (iv) who has undergone training in taking and dealing with buccal samples in accordance with the training criteria determined by the approved agency

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

- (a) that person has been charged with that offence; or
- (b) there is good cause to suspect that person of having committed that offence

suspect compulsion order means an order made under section 16

suspect request means a request made pursuant to section 6

triggering offence means the particular offence that has triggered the authority to take a bodily sample under section 24J or, as the case may be, section 24K in a given case

venous sample means a sample of venous blood taken in accordance with normal medical procedures

video record has the same meaning as in section 4 of the Evidence Act 2006

young person means a person of or over 14 years of age but under 17 years of age.

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

Section 2(1) **approved agency**: inserted, on 15 April 2004, by section 5(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **blood sample**: inserted, on 15 April 2004, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **blood sample** or **sample**: repealed, on 15 April 2004, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **bodily sample** or **sample**: inserted, on 15 April 2004, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **buccal sample**: inserted, on 15 April 2004, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **charged**: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **charged**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2(1) **child**: inserted, on 15 April 2004, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **compulsion order**: amended, on 15 April 2004, by section 5(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **conviction** paragraph (a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2(1) **conviction** paragraph (c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **conviction** paragraph (c): amended, on 1 September 2004, by section 50(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 2(1) **conviction** paragraph (d): added, on 1 September 2004, by section 50(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 2(1) **databank compulsion notice**: inserted, on 15 April 2004, by section 5(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **databank compulsion notice hearing**: inserted, on 15 April 2004, by section 5(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **databank compulsion order**: repealed, on 15 April 2004, by section 5(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **detained under a sentence of imprisonment**: inserted, on 15 April 2004, by section 5(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **District Court**: inserted, on 5 December 2011, by section 32 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **District Court**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2(1) **home detention**: repealed, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 2(1) **imprisonable offence**: inserted, on 5 December 2011, by section 32 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **independent adult**: substituted, on 6 September 2010, by section 4(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **indictable offence**: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **lawyer**: substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **nurse**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **parent** paragraph (b): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **parent** paragraph (c): amended, on 15 April 2004, by section 5(8) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **Part 2A request**: inserted, on 15 April 2004, by section 5(9) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **Part 2B temporary databank**: inserted, on 6 September 2010, by section 4(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **Part 3 order**: inserted, on 15 April 2004, by section 5(9) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **prison officer**: substituted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **relevant offence**: substituted, on 15 April 2004, by section 5(10) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **relevant offence** paragraph (ba): inserted, on 6 September 2010, by section 4(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **relevant offence** paragraph (c): amended, on 6 September 2010, by section 4(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **relevant offence** paragraph (d): amended, on 6 September 2010, by section 4(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **suitably qualified person**: inserted, on 15 April 2004, by section 5(11) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 2(1) **suitably qualified person** paragraph (a)(ii): amended, on 15 December 2005, by section 3 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Section 2(1) **triggering offence**: inserted, on 6 September 2010, by section 4(6) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 2(1) **video record**: added, on 27 March 2008, by section 4 of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

Section 2(1) **young person**: added, on 6 September 2010, by section 4(6) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

2A Meaning of independent adult

For the purpose of this Act, **independent adult**,—

- (a) in relation to a suspect under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself, means,—
 - (i) if a parent or other person having the care of the suspect is present under section 50(1)(b), that parent or person; or
 - (ii) if a person referred to in subparagraph (i) is not present but the suspect, or, if section 50(3) applies, the suspect's parent or other person having care of the suspect, has chosen to have a lawyer or other person present under section 50(1)(a), that lawyer or other person; or
 - (iii) if none of the persons referred to in subparagraphs (i) and (ii) is present, any person of or over the age of 17 years, who must not be a Police employee within the meaning of section 4 of the Policing Act 2008,—
 - (A) chosen by the suspect; or
 - (B) if the suspect fails or refuses to choose, chosen by a constable:
- (b) in relation to a young person from whom a bodily sample is being taken under Part 2B, means—
 - (i) if a parent or other person having the care of the young person is present under section 50A(2)(b), that parent or person; or
 - (ii) if a person referred to in subparagraph (i) is not present but the young person, or, if section 50A(4) applies, the young person's parent or other person having care of the young person has chosen to have a lawyer or other person present under section 50A(2)(a), that lawyer or other person; or

- (iii) if none of the persons referred to in subparagraphs (i) and (ii) is present, any person of or over the age of 17 years, who must not be a Police employee within the meaning of section 4 of the Policing Act 2008,—
 - (A) chosen by the young person; or
 - (B) if the young person fails or refuses to choose, chosen by a constable.

Section 2A: inserted, on 6 September 2010, by section 5 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

3 Act to bind the Crown

This Act binds the Crown.

4 Application

- (1) This Act applies to the investigation of offences committed, or believed to have been committed, before or after the commencement of this Act.
- (2) Part 3 applies to—
 - (a) convictions entered after the commencement of this Act; and
 - (b) convictions entered before the commencement of this Act if, and only if, the person in relation to whom the conviction was entered is, on the date of commencement of section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2003, detained under a sentence of imprisonment in relation to that conviction.
- (3) Despite subsection (2), nothing in Part 3 applies to any conviction entered before the commencement of section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 for any—
 - (a) offence against any of the provisions listed in Part 2 of the Schedule; or
 - (b) attempt to commit an offence against any of the provisions listed in Part 1 or Part 2 of the Schedule unless the offence is itself specified as an attempt in Part 1 of the Schedule; or
 - (c) conspiracy to commit an offence against any of the provisions listed in Part 1 or Part 2 of the Schedule; or
 - (d) offence punishable by a term of imprisonment of 7 years or more unless it is an offence listed in Part 1 of the Schedule; or
 - (e) attempt to commit an offence of the kind referred to in paragraph (d) unless the offence is itself specified as an attempt in Part 1 of the Schedule; or
 - (f) conspiracy to commit an offence of the kind referred to in paragraph (d).

Section 4(2): substituted, on 15 April 2004, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 4(3): added, on 15 April 2004, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

4A Detained under sentence of imprisonment

- (1) For the purposes of section 4 and Part 3, a person is **detained under a sentence of imprisonment** if he or she has been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule and in relation to that offence he or she is detained under a sentence of imprisonment—
- (a) in a prison; or
 - (b) in a residence administered by the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or
 - (c) in, or on leave from, a hospital—
 - (i) under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (ii) following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (iii) under an order under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (d) in, or on leave from, a secure facility—
 - (i) following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
 - (ii) under an order under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) To avoid doubt, a person is detained under a sentence of imprisonment under subsection (1) if he or she is detained in any manner described in that subsection,—
- (a) under cumulative sentences of imprisonment (treated as 1 term under section 92(2) of the Criminal Justice Act 1985) or a notional single sentence (as that term is defined under section 4(1) of the Parole Act 2002), a sentence of imprisonment within which, or a component of which, is for an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, whether or not he or she has—
 - (i) reached the start date of the sentence or component that relates to the offence; or
 - (ii) passed the release date of the sentence or component that relates to the offence; or
 - (b) under a concurrent sentence of imprisonment imposed on him or her before he or she was released from an earlier sentence of imprisonment imposed for an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule.

- (3) To avoid doubt, a person is not detained under a sentence of imprisonment under subsection (1) if he or she has been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule and in relation to that offence he or she is—
- (a) serving a sentence of imprisonment by way of home detention; or
 - (ab) subject to residential restrictions imposed under section 15 of the Parole Act 2002; or
 - (b) detained in a prison subject to an interim recall order.

Section 4A: inserted, on 15 April 2004, by section 8 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 4A(1): amended, on 5 December 2013, by section 4(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 4A(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4A(1)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 4A(1)(c): substituted, on 1 September 2004, by section 50(3) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 4A(1)(d): added, on 1 September 2004, by section 50(3) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 4A(2)(a): amended, on 5 December 2013, by section 4(2)(a) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 4A(2)(a)(i): amended, on 5 December 2013, by section 4(2)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 4A(2)(a)(ii): amended, on 5 December 2013, by section 4(2)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 4A(2)(b): amended, on 5 December 2013, by section 4(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 4A(3): amended, on 5 December 2013, by section 4(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 4A(3)(ab): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4A(3)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

4B Approval of agency to determine training criteria for dealing with, and device or other means for taking, buccal samples

- (1) The Minister of Justice may, by notice in the *Gazette*, approve the following:
- (a) an agency to determine the training criteria for persons taking, supervising the taking of, or dealing with buccal samples;
 - (b) a device for taking, or other means of providing, buccal samples.
- (2) A notice in the *Gazette* made under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 4B: inserted, on 31 October 2003, by section 9 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 4B(2): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Part 2

Obtaining bodily samples from suspects

Part 2 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Authority to obtain bodily sample from suspects

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

5 Authority to take bodily sample from suspect

Subject to section 72, in any criminal investigation in respect of an offence committed or believed to have been committed, a bodily sample may be taken from a suspect, for the purposes of that investigation, on behalf of any constable only if—

- (a) the offence is an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
- (b) either,—
 - (i) in the case of a suspect who is of or over the age of 17 years, the suspect consents to the taking of that sample in accordance with section 9; or
 - (ii) in the case of a suspect who is of or over the age of 14 years but under 17 years, both the suspect and a parent of the suspect consent to the taking of that sample in accordance with section 9; or
 - (iii) the sample is taken under and in accordance with a suspect compulsion order or a juvenile compulsion order; and
- (c) the sample is taken in accordance with the procedures set out in Part 4.

Section 5 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 5: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 5: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 5(a): amended, on 5 December 2011, by section 33 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

5A Relationship to Part 2B

The authority in this Part to take, or order the taking of, a bodily sample from a person in respect of an offence is not limited by the fact that a bodily sample

has been taken from that person under Part 2B (whether in respect of that offence or a different offence).

Section 5A: inserted, on 6 September 2010, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Obtaining bodily sample by consent

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

6 Request to consent to taking of bodily sample

- (1) Subject to section 8, for the purposes of any criminal investigation in respect of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule committed or believed to have been committed, a constable may request any suspect to give a bodily sample if that constable has reasonable grounds to believe that analysis of the sample would tend to confirm or disprove the suspect's involvement in the commission of the offence.
- (2) Subject to section 8, on making a request under subsection (1) of this section, the constable shall—
 - (a) hand to the suspect to whom the request is made a written notice containing the particulars specified in section 7(b); and
 - (b) inform the suspect, in a manner and in language that the suspect is likely to understand,—
 - (i) of the offence in respect of which the request is made; and
 - (ii) that the constable has reasonable grounds to believe that analysis of a bodily sample taken from the suspect would tend to confirm or disprove the suspect's involvement in the commission of that offence; and
 - (iii) that the suspect is under no obligation to give the sample; and
 - (iv) that if the suspect consents to the taking of the sample, the suspect may, at any time before the sample is taken, withdraw that consent; and
 - (v) that the suspect may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample; and
 - (vi) that the sample will be analysed and may provide evidence that may be used in criminal proceedings; and
 - (vii) that if the suspect refuses to consent to the taking of the sample, and there is good cause to suspect that the suspect committed the offence in respect of which the request is made, or a related offence, and that offence is an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, an application may be made to a District Court Judge for an order requiring the suspect to give a bodily sample.

Section 6 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 6(1): amended, on 5 December 2011, by section 34(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 6(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 6(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 6(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 6(2)(b)(ii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 6(2)(b)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 6(2)(b)(vii): amended, on 5 December 2011, by section 34(2)(a) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 6(2)(b)(vii): amended, on 5 December 2011, by section 34(2)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 6(2)(b)(vii): amended, on 15 April 2004, by section 6(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

7 Form and content of notice

Subject to section 8, every notice given pursuant to section 6(2)(a)—

- (a) shall be in the prescribed form; and
- (b) shall contain the following particulars:
 - (i) a statement that it is believed that the suspect has or may have committed an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule and is being requested to consent to the taking of a bodily sample:
 - (ii) a statement that there are reasonable grounds to believe that analysis of the sample would tend to confirm or disprove the suspect's involvement in the commission of that offence:
 - (iii) a statement that the suspect is under no obligation to give the sample:
 - (iv) a statement that if the suspect consents to the taking of the sample, the suspect may, at any time before the sample is taken, withdraw that consent:
 - (v) a statement that the suspect may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample:
 - (vi) a statement that unless, within the period of 48 hours after the request is made, the suspect consents to the taking of the sample, the suspect shall be deemed to have refused to consent to the taking of the sample:

- (vii) a statement that the sample will be analysed and may provide evidence that may be used in criminal proceedings:
- (viii) a statement that if the suspect refuses to consent to the taking of the sample, and there is good cause to suspect that the suspect committed the offence in respect of which the request is made, or a related offence, an application may be made to a District Court Judge for an order requiring the suspect to give a bodily sample:
- (ix) a summary of the provisions of sections 48, 49, and 49A relating to the procedure for taking the sample:
- (x) a statement that the suspect may request that the sample be taken in the presence of a lawyer, or another person, of the suspect's own choice:
- (xi) a summary of the provisions of sections 55, 56, 56A, and 59 relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis:
- (xii) a statement that the sample, and any information derived from any analysis of the sample, will be held by or on behalf of the Police:
- (xiii) a statement that if the suspect is convicted of the offence in respect of which the sample is taken, or a related offence, information derived from any analysis of the sample will be held on a DNA profile databank:
- (xiv) a reference to the provisions of section 60 relating to the destruction of the sample and of any information derived from any analysis of the sample:
- (xv) such other particulars as may be prescribed.

Section 7(b)(i): amended, on 5 December 2011, by section 35(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 7(b)(i): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 7(b)(viii): amended, on 5 December 2011, by section 35(2)(a) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 7(b)(viii): amended, on 5 December 2011, by section 35(2)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 7(b)(viii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 7(b)(ix): amended, on 15 April 2004, by section 10(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 7(b)(x): substituted, on 15 April 2004, by section 10(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 7(b)(xi): amended, on 15 April 2004, by section 10(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 7(b)(xiii): amended, on 5 December 2011, by section 35(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

8 Suspect requests to persons under 17

- (1) Nothing in section 6—
 - (a) applies in respect of a suspect who is a child or was a child at the time the offence in relation to which the request is made was committed; or
 - (b) makes a person of the kind referred to in paragraph (a) capable of consenting to the taking of a bodily sample in response to a request made under that section.
- (1A) However, a suspect who is a child, or was a child at the time the offence is alleged to have been committed, may consent to the taking of a buccal sample as a result of a Part 2A request if, in accordance with section 272 of the Oranga Tamariki Act 1989, he or she may not be lawfully prosecuted under the Criminal Procedure Act 2011 for that offence.
- (2) Where a suspect request is made under section 6 to a suspect who is of or over the age of 14 years but under 17 years, that section and section 7 shall apply subject to the following modifications:
 - (a) the constable who makes the suspect request shall take all reasonable steps to ensure that a copy of the notice required by section 6(2)(a) to be handed to the suspect is also given to a parent of the suspect; and
 - (b) the constable who makes the suspect request shall, in addition to informing the suspect of the matters specified in section 6(2)(b), inform the suspect—
 - (i) that the bodily sample cannot be taken from the suspect unless both the suspect and a parent of the suspect consent to the taking of the sample; and
 - (ii) that no parent of the suspect is under any obligation to consent to the taking of the sample; and
 - (c) the notice required by section 6(2)(a) to be handed to the suspect shall, in addition to the particulars specified in section 7(b), contain the following particulars:
 - (i) a statement that the bodily sample cannot be taken from the suspect unless both the suspect and a parent of the suspect consent to the taking of the sample:
 - (ii) a statement that no parent of the suspect is under any obligation to consent to the taking of the sample:
 - (iii) a statement that any parent of the suspect may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample:
 - (iv) a statement that if a parent of the suspect consents to the taking of the sample, that parent may, at any time before the sample is taken, withdraw that consent:

- (v) a statement that a bodily sample may be taken in the presence of a parent;
- (vi) a summary of section 52A relating to who must be present if the suspect takes a buccal sample himself or herself; and
- (d) the notice required by section 6(2)(a) to be handed to the suspect shall, instead of the particulars specified in section 7(b)(vi), contain a statement that unless, within the period of 48 hours after the request is made, both the suspect and a parent of the suspect consent to the taking of the sample, the suspect shall be deemed to have refused to consent to the taking of the sample.

Section 8(1): substituted, on 15 April 2004, by section 11(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 8(1A): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 8(1A): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 8(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 8(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 8(2)(b)(i): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 8(2)(c)(i): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 8(2)(c)(iv): amended, on 15 April 2004, by section 11(2)(a) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 8(2)(c)(v): added, on 15 April 2004, by section 11(2)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 8(2)(c)(vi): added, on 15 April 2004, by section 11(2)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

9 Consent to taking of bodily sample

- (1) No consent to the taking of a bodily sample in response to a suspect request shall be valid unless—
 - (a) it is in writing and signed by the person giving the consent; or
 - (b) it is given orally and recorded on a video record.
- (2) Where any such consent is in writing, the consent shall be signified on the notice required by section 6(2)(a) to be handed to the suspect at the time of the making of the suspect request, or on a copy of that notice.
- (3) Where any such consent is recorded on a video record, the video record must clearly show,—
 - (a) in the case of a consent given by a suspect,—
 - (i) the making of the suspect request to the suspect; and

- (ii) the handing to the suspect of the notice required by section 6(2)(a) of this Act; and
 - (iii) the giving of consent to the taking of the sample:
- (b) in the case of a consent given by a parent of a suspect,—
- (i) the giving to that person of the copy of the notice required by section 6(2)(a), as required by section 8(2)(a), or an acknowledgment by that person that a copy of that notice has been so given to him or her; and
 - (ii) the giving of consent to the taking of a sample from the suspect.

Section 9 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 9(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 9(1)(b): amended, on 27 March 2008, by section 5(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

Section 9(3): amended, on 27 March 2008, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

Section 9(3)(b)(i): amended, on 15 April 2004, by section 12 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

10 Withdrawal of consent

- (1) Where any person consents to the taking of a bodily sample in response to a suspect request,—
- (a) that person may, at any time before the sample is taken, withdraw that consent, either orally or in writing; and
 - (b) on any such withdrawal, the suspect to whom the suspect request was made shall be deemed to have refused to consent to the taking of the sample.
- (2) Where any such consent is withdrawn orally, that withdrawal shall be recorded in writing by a constable as soon as practicable.

Section 10(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 10(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

11 Consent deemed to have been refused

For the purposes of sections 13, 16, 18, and 23, on the expiry of the period of 48 hours after a request is made under section 6 to a suspect, that suspect shall be deemed to have refused to consent to the taking of a bodily sample in response to that request unless, within that period,—

- (a) in the case of a suspect request made to a person who is of or over the age of 17 years, that suspect has so consented; or

- (b) in the case of a suspect request made to a person who is under the age of 17 years, both—
 - (i) that suspect; and
 - (ii) a parent of that suspect—
have so consented.

Section 11: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

12 Right of suspect in custody to consult lawyer

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

Obtaining bodily sample by court order from persons 17 and over

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

13 Application for order authorising taking of bodily sample

- (1) An application may be made in accordance with this section to a District Court Judge for an order requiring a suspect who is of or over the age of 17 years to give a bodily sample in any case where—
 - (a) there is good cause to suspect that the suspect has committed an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
 - (b) the suspect has refused to consent to the taking of a bodily sample in response to a suspect request made in respect of that offence, or a related offence.
- (2) Every application under subsection (1) shall be made by a constable who is of or above the level of position of inspector, in writing and on oath, and shall set out the following particulars:
 - (a) the facts relied on to show that there is good cause to suspect that the respondent has committed an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule:
 - (b) the reasons why it is considered necessary to obtain a suspect compulsion order in relation to the respondent, including the facts relied on to show that there are reasonable grounds to believe that analysis of a bodi-

ly sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence:

- (c) where possible, the type of analysis that is likely to be required in respect of the bodily sample sought from the respondent, having regard to the nature of the material (being material of the kind referred to in paragraph (b) of section 16(1)) found in any of the circumstances referred to in that paragraph.
- (3) Subject to section 15, where an application is made under this section,—
- (a) the applicant shall serve notice of the application on the respondent; and
 - (b) both the applicant and the respondent are entitled to appear and to adduce evidence at the hearing of the application.
- (4) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law.

Section 13 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 13(1): amended, on 5 December 2011, by section 36(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 13(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 13(1)(a): amended, on 5 December 2011, by section 36(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 13(1)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 13(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 13(2)(a): amended, on 5 December 2011, by section 36(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 13(2)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 13(2)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

14 Prohibition against publication of name of respondent

- (1) Where an application is made under section 13, no person shall publish, in any report or account relating to any proceedings on that application, the name of the respondent, or any name or particulars likely to lead to the identification of the respondent, unless—
- (a) a District Court Judge, by order, permits such publication; or
 - (b) subject to subsection (2), at the time of the publication of the report or account, the respondent is charged with the offence to which the application relates, or a related offence.

- (2) Nothing in subsection (1)(b) applies where there is in force in respect of the respondent, in relation to the offence to which the application relates or a related offence, any order of any court the effect of which is to prohibit the publication of any name or particulars likely to lead to the identification of the respondent.
- (3) Nothing in this section shall be construed to limit or restrict the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to any judicial proceedings.

Section 14(1)(a): amended, on 5 December 2011, by section 37 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

15 Information may be withheld from respondent

- (1) Where an application is made under section 13, a District Court Judge may, on the *ex parte* application of the applicant, order that any information included in the application made under section 13 shall not be disclosed to the respondent, and that information is not required to be included in the notice given to the respondent pursuant to subsection (3)(a) of that section.
- (2) On the hearing of any application made under section 13, the Judge may, on the application of the applicant, order that any evidence to be tendered on behalf of the applicant may be tendered in writing, and shall not be disclosed to the respondent. An application for such an order shall be heard in the absence of the respondent.
- (3) A Judge may not make an order under subsection (1) or subsection (2) in relation to any information or evidence unless the Judge is satisfied—
 - (a) that the disclosure of that information or evidence to the respondent would be likely—
 - (i) to identify, or lead to the identification of, any constable whose identity is being concealed, or was concealed, for the purposes of the investigation of any offence relevant to the application; or
 - (ii) to endanger the safety of any person; or
 - (iii) to substantially prejudice the investigation of the offence to which the application relates, or any other offence; and
 - (b) that the withholding of the information or evidence from the respondent would not be contrary to the interests of justice.
- (4) Where, pursuant to an order made under subsection (1) of this section, any information is omitted from the notice served on the respondent pursuant to section 13(3)(a), the notice shall include a statement that information has been omitted from the notice pursuant to such an order.
- (5) Notwithstanding any enactment or rule of law or rules of court entitling any party to any proceedings to demand the production of any documents, the respondent shall not be entitled to demand the production, for the purposes of the proceedings on the application made under section 13, of any document that

contains information or evidence withheld from the respondent pursuant to an order made under subsection (1) of this section; but if any such document would, apart from this subsection, be required to be made available to the respondent, that document may be made available by making a copy of the document available with such deletions or alterations as are necessary.

- (6) Nothing in this section shall be construed to limit or restrict the provisions of any other enactment relating to the prohibition or regulation of—
- (a) the disclosure of evidence tendered in any judicial proceedings; or
 - (b) the publication of reports or particulars relating to any such proceedings.

Section 15(1): amended, on 5 December 2011, by section 38 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 15(3)(a)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

16 Judge may authorise bodily sample to be taken

- (1) On the hearing of an application for a suspect compulsion order, a District Court Judge may make an order requiring the respondent to give a bodily sample if the Judge is satisfied that—
- (a) there is good cause to suspect that the respondent (being a person who is of or over the age of 17 years) has committed the offence to which the application relates; and
 - (b) material reasonably believed to be from, or genetically traceable to, the body of a person who committed the offence has been found or is available—
 - (i) at the scene of the offence; or
 - (ii) on the victim of the offence; or
 - (iii) from within the body or from any thing coming from within the body of the victim of the offence that is reasonably believed to be associated with, or having resulted from, the commission of the offence; or
 - (iv) on any thing reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (v) on any person or thing reasonably believed to have been associated with the commission of the offence; and
 - (c) there are reasonable grounds to believe that analysis of a bodily sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence; and
 - (d) the respondent has refused to consent to the taking of a bodily sample in response to a suspect request made in respect of the offence, or a related offence; and
 - (e) in all the circumstances, it is reasonable to make the order.

- (2) In considering whether or not to make a suspect compulsion order, the Judge shall have regard to—
- (a) the nature and seriousness of the offence to which the application relates; and
 - (b) any reasons given by the respondent for opposing the making of the order sought; and
 - (c) any evidence regarding the importance, to the investigation of the offence, of obtaining a bodily sample from the respondent; and
 - (d) any other matter that the Judge considers relevant.
- (3) Without limiting the generality of subsection (2), in considering whether or not to make a suspect compulsion order, the Judge shall also have regard to the following matters:
- (a) whether or not the respondent has offered, or been given an opportunity, to give a specimen from his or her body (other than a bodily sample) from which a DNA profile may be obtained for the purpose of confirming or disproving the respondent's involvement in the commission of the offence to which the application relates, or a related offence:
 - (b) if such an offer has been made, or such an opportunity has been given, whether or not the respondent has given such a specimen:
 - (c) if the respondent has given such a specimen, whether or not a suitable DNA profile has been obtained from that specimen for the purpose referred to in paragraph (a).
- (4) Where the Judge adjourns the hearing of any proceedings on an application for a suspect compulsion order for the purpose of giving the respondent an opportunity to give, by consent, a specimen from his or her body (including a bodily sample) from which a DNA profile may be obtained for the purpose of confirming or disproving the respondent's involvement in the commission of the offence to which the application relates, the period of the adjournment shall be only for as long as the Judge considers reasonably necessary for the purpose of giving the respondent that opportunity.

Section 16 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(1): amended, on 5 December 2011, by section 39(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 16(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(1)(a): amended, on 5 December 2011, by section 39(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 16(1)(b): substituted, on 15 April 2004, by section 13 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(1)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(1)(d): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(2)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(3)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(3)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(3)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 16(4): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

17 Further applications for suspect compulsion order

- (1) Nothing in this Act—
- (a) prohibits the making of an application under section 13 for a suspect compulsion order in respect of an offence; or
 - (b) prohibits a Judge from making a suspect compulsion order in respect of an offence—

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

- (2) Notwithstanding anything in this section or in section 16, where a further application for a suspect compulsion order is made under section 13 in respect of an offence in relation to which a previous application under section 13 has been made, the Judge may refuse to make the order sought if he or she is satisfied that the further application is vexatious or an abuse of the process of the court.

17A Judge to specify method of taking sample if further suspect compulsion order made

- (1) If a Judge decides to make a further suspect compulsion order in respect of a person against whom a previous suspect compulsion order has been made for the same offence, the Judge must specify in the order the method by which a bodily sample is to be taken.
- (2) In determining the method by which a bodily sample is to be taken, the Judge must have regard to—
- (a) any view expressed by the constable who is of or above the level of position of inspector who is making the application regarding which of the 3 methods should be used; and
 - (b) any view expressed by the respondent regarding which of the 3 methods should be used.

Section 17A: inserted, on 15 April 2004, by section 14 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 17A(2)(a): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Obtaining bodily sample by court order from persons under 17

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

18 Application for order authorising taking of bodily sample from person under 17

- (1) An application may be made in accordance with this section to a District Court Judge for an order requiring a suspect who is under the age of 17 years to give a bodily sample in any case where—
- (a) there is good cause to suspect that the suspect has committed an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
 - (b) the suspect may lawfully be prosecuted for that offence (being, in the case of a suspect who is a child or was a child at the time the offence is alleged to have been committed,—
 - (i) the offence of murder or manslaughter; or
 - (ii) an offence (other than murder or manslaughter)—
 - (A) that is alleged to have been committed when the suspect was aged 12 or 13 years; and
 - (B) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - (iii) an offence (other than murder or manslaughter)—
 - (A) that is alleged to have been committed when the suspect was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - (B) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years); and
 - (c) in the case of a suspect who was of or over the age of 14 years at the time the offence in relation to which the application is made was committed,—
 - (i) a suspect request has been made to the suspect in respect of that offence, or a related offence; but
 - (ii) consent to the taking of a bodily sample in response to the request has been refused, either by the suspect or by a parent of the suspect, or both.

- (2) Every application under subsection (1) shall be made by a constable who is of or above the level of position of inspector, in writing and on oath, and shall set out the following particulars:
 - (a) the facts relied on to show that there is good cause to suspect that the respondent has committed an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule:
 - (b) the reasons why it is considered necessary to obtain a juvenile compulsion order in relation to the respondent, including the facts relied on to show that there are reasonable grounds to believe that analysis of a bodily sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence:
 - (c) where possible, the type of analysis that is likely to be required in respect of the bodily sample sought from the respondent, having regard to the nature of the material (being material of the kind referred to in paragraph (d) of section 23(1)) found in any of the circumstances referred to in that paragraph.
- (3) Subject to section 15 (as applied by section 20), where an application is made under this section for a juvenile compulsion order,—
 - (a) the applicant shall serve notice of the application on—
 - (i) the respondent; and
 - (ii) a parent or other person having the care of the respondent; and
 - (iii) where a lay advocate is for the time being appointed in respect of the respondent under section 326 of the Oranga Tamariki Act 1989, that lay advocate; and
 - (b) the following persons are entitled to appear and to adduce evidence at the hearing of the application:
 - (i) the applicant;
 - (ii) the respondent;
 - (iii) any lawyer who represents the respondent;
 - (iv) any person who is a parent of, or who has the care of, the respondent;
 - (v) any lawyer representing any person referred to in subparagraph (iv):
 - (vi) any person on whom notice of the application is served pursuant to paragraph (a)(iii):
 - (vii) with the leave of a District Court Judge, any other person.
- (4) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law.

Section 18 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 18(1): amended, on 5 December 2011, by section 40(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 18(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 18(1)(a): amended, on 5 December 2011, by section 40(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 18(1)(b): substituted, on 1 October 2010, by section 55(3) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 18(1)(b)(iii)(A): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 18(1)(c): amended, on 15 April 2004, by section 15(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 18(1)(c)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 18(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 18(2)(a): amended, on 5 December 2011, by section 40(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 18(2)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 18(2)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 18(3)(a)(iii): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 18(3)(b)(vii): amended, on 5 December 2011, by section 40(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

19 Prohibition against publication of name of respondent under 17

- (1) Where an application is made under section 18, no person shall publish, in any report or account relating to any proceedings on the application,—
 - (a) the name of the respondent or the parents or any person having the care of the respondent; or
 - (b) any other name or particulars likely to lead to the identification of the respondent.
- (2) Nothing in subsection (1) shall be construed to limit or restrict the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to any judicial proceedings.

20 Sections 15, 17, and 17A to apply

- (1) Section 15 shall apply in relation to—
 - (a) an application made under section 18; and
 - (b) the hearing of such an application—

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

- (2) Section 17 and section 17A shall apply in respect of applications made under section 18 as if they were applications made under section 13.

Section 20 heading: amended, on 15 December 2005, by section 4(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Section 20(2): amended, on 15 December 2005, by section 4(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

21 Appointment of lawyer to represent respondent

- (1) Where an application is made under section 18, then unless—
- (a) the respondent is already represented by a lawyer in the proceedings; or
 - (b) the Judge is satisfied that legal representation has been arranged, or will be arranged, for the respondent in the proceedings,—

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

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

- (3) Where,—
- (a) pursuant to subsection (1), a Judge is required to appoint a lawyer to represent a respondent in any proceedings; and
 - (b) a lawyer has been appointed, pursuant to section 323 of the Oranga Tamariki Act 1989, to represent the respondent in any proceedings,—

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

Compare: 1989 No 24 s 323

Section 21(3)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

22 Further provisions relating to appointment of lawyer for respondent

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

- (a) in any proceedings in respect of any warrant issued pursuant to section 45 in respect of the respondent:
- (b) where a juvenile compulsion order is made in respect of the respondent, in any proceedings on an application made under section 47 in respect of the order.

Compare: 1989 No 24 s 324

23 Judge may authorise bodily sample to be taken

- (1) On the hearing of an application for a juvenile compulsion order, a Judge may make an order requiring the respondent to give a bodily sample if the Judge is satisfied that—
 - (a) there is good cause to suspect that the respondent (being a person who is under the age of 17 years) has committed the offence to which the application relates; and
 - (b) the respondent may lawfully be prosecuted for that offence (being, in the case of a suspect who is a child or was a child at the time the offence is alleged to have been committed,—
 - (i) the offence of murder or manslaughter; or
 - (ii) an offence (other than murder or manslaughter)—
 - (A) that is alleged to have been committed when the respondent was aged 12 or 13 years; and
 - (B) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
 - (iii) an offence (other than murder or manslaughter)—
 - (A) that is alleged to have been committed when the respondent was aged 12 or 13 years, and was for the purposes of section 272(1)(c) of the Oranga Tamariki Act 1989 a previous offender under section 272(1A) or (1B) of that Act; and
 - (B) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years); and
 - (c) where the respondent was of or over the age of 14 years at the time the offence in relation to which the application is made was committed,—
 - (i) a suspect request has been made to the respondent in respect of that offence, or a related offence; and
 - (ii) consent to the taking of a bodily sample in response to the request has been refused, either by the respondent or by a parent of the respondent, or both; and
 - (d) material reasonably believed to be from, or genetically traceable to, the body of a person who committed the offence has been found or is available—

- (i) at the scene of the offence; or
 - (ii) on the victim of the offence; or
 - (iii) from within the body or from any thing coming from within the body of the victim of the offence that is reasonably believed to be associated with, or having resulted from, the commission of the offence; or
 - (iv) on any thing reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (v) on any person or thing reasonably believed to have been associated with the commission of the offence; and
 - (e) there are reasonable grounds to believe that analysis of a bodily sample taken from the respondent would tend to confirm or disprove the respondent's involvement in the commission of the offence; and
 - (f) in all the circumstances, it is reasonable to make the order.
- (2) In considering whether or not to make a juvenile compulsion order, the Judge shall have regard to—
- (a) the nature and seriousness of the offence to which the application relates; and
 - (b) the age of the respondent; and
 - (c) any reasons given by—
 - (i) the respondent; and
 - (ii) any parent or person having the care of the respondent—
for opposing the making of the order sought; and
 - (d) any evidence regarding the importance, to the investigation of the offence, of obtaining a bodily sample from the respondent; and
 - (e) any other matter that the Judge considers relevant.
- (3) Without limiting the generality of subsection (2), in considering whether or not to make a juvenile compulsion order, the Judge shall also have regard to the following matters:
- (a) whether or not the respondent has offered, or been given an opportunity, to give a specimen from his or her body (other than a bodily sample) from which a DNA profile may be obtained for the purpose of confirming or disproving the respondent's involvement in the commission of the offence to which the application relates, or a related offence:
 - (b) if such an offer has been made, or such an opportunity has been given, whether or not the respondent has given such a specimen:
 - (c) if the respondent has given such a specimen, whether or not a suitable DNA profile has been obtained from that specimen for the purpose referred to in paragraph (a).

- (4) Where the Judge adjourns the hearing of any proceedings on an application for a juvenile compulsion order for the purpose of giving the respondent an opportunity to give, by consent, a specimen from his or her body (including a bodily sample) from which a DNA profile may be obtained for the purpose of confirming or disproving the respondent's involvement in the commission of the offence to which the application relates, the period of the adjournment shall be only for as long as the Judge considers reasonably necessary for the purpose of giving the respondent that opportunity.

Section 23 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(1)(a): amended, on 5 December 2011, by section 41 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 23(1)(b): substituted, on 1 October 2010, by section 55(4) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 23(1)(b)(iii)(A): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 23(1)(c): amended, on 15 April 2004, by section 16(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(1)(c)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(1)(d): substituted, on 15 April 2004, by section 16(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(1)(e): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(2)(d): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(3)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(3)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(3)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 23(4): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Form and content of compulsion order

24 Form and content of compulsion order

- (1) Every suspect compulsion order and every juvenile compulsion order shall be in the prescribed form.
- (2) Every suspect compulsion order and every juvenile compulsion order is subject to—
- (a) conditions included in the order by the Judge under section 24A; and
 - (b) special conditions (if any) included in the order by the Judge.

- (3) *[Repealed]*
- (4) Every suspect compulsion order and every juvenile compulsion order shall contain the following particulars:
- (a) subject to any conditions specified in the order, the date on which, and the place where, the suspect is to attend to give a bodily sample:
 - (b) a summary of the provisions of sections 48, 49, and 49A relating to the procedure for the taking of the sample and a statement that in certain circumstances a Judge may specify the method by which a bodily sample is to be taken:
 - (c) a statement that the suspect may request that the sample be taken in the presence of a lawyer, or another person, of the suspect's own choice:
 - (ca) in the case of a juvenile compulsion order as well as the other particulars referred to in this subsection, a statement that a bodily sample may be taken in the presence of a parent or other person having the care of the suspect:
 - (d) a summary of the provisions of sections 55, 56, 56A, and 59 relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis:
 - (e) conditions included by the Judge under subsection (2):
 - (f) a statement that if the suspect refuses to allow a bodily sample to be taken, a sample may be taken by force under section 54(2) and, if applicable, section 54(3):
 - (g) a statement that the sample, and any information derived from any analysis of the sample, will be held by or on behalf of the Police:
 - (h) a statement that if the suspect is convicted of the offence in respect of which the order is made, or a related offence that is an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, information derived from any analysis of the sample will be held on a DNA profile databank:
 - (i) a reference to the provisions of section 60 relating to the destruction of the sample and of any information derived from any analysis of the sample:
 - (j) such other particulars as may be prescribed.

Section 24(2): substituted, on 15 April 2004, by section 17(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(3): repealed, on 15 April 2004, by section 17(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(b): substituted, on 15 April 2004, by section 17(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(c): substituted, on 15 April 2004, by section 17(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(ca): inserted, on 15 April 2004, by section 17(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(d): amended, on 15 April 2004, by section 17(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(e): substituted, on 15 April 2004, by section 17(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(f): substituted, on 15 April 2004, by section 17(6) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24(4)(h): amended, on 5 December 2011, by section 42 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24A Conditions included in compulsion order

- (1) Without limiting the generality of section 24(2)(b), if a Judge is satisfied that it is necessary to do so on account of a respondent's state of health, the Judge may include in a suspect compulsion order or juvenile compulsion order the condition that a bodily sample must not be taken unless—
 - (a) it is taken by a particular method specified in the order by the Judge; and
 - (b) an independent medical practitioner approved by the Judge has certified that the method will not cause serious harm to the health of the respondent.
- (2) Every suspect compulsion order and every juvenile compulsion order is, unless subsection (3) or subsection (4) or subsection (5) applies, subject to the condition that the respondent may attend to give a bodily sample at a different place, on an earlier date, or at a different place and on an earlier date than that specified in the order if, and only if, the respondent and a constable agree to vary the place, date, or place and date specified in the order.
- (3) If a Judge believes good reasons exist why the respondent must attend to give a bodily sample at the place, on the date, or at the place and on the date specified in the suspect compulsion order or juvenile compulsion order, the Judge may include the condition that the respondent must attend to give the sample at the place, on the date, or at the place and on the date specified in the order.
- (4) If a respondent is serving a sentence of imprisonment by way of home detention or a sentence of home detention imposed under section 80A of the Sentencing Act 2002 or is on parole subject to residential restrictions imposed under section 15 of the Parole Act 2002, a suspect compulsion order or juvenile compulsion order must include the following conditions:
 - (a) that the respondent must give a bodily sample at the residence at which the respondent is detained or is required to remain; and
 - (b) that the respondent and a constable may not agree to vary the place at which the person is to give the sample, but may agree to vary the date on which the person is to give the sample to a date earlier than the date specified in the order unless a Judge has included a condition in the order

under subsection (3) requiring the person to attend to give the sample on the date specified in the order.

- (5) Despite subsection (4)(a), a Judge may include a condition in a suspect compulsion order or juvenile compulsion order that a respondent give a sample at a place other than the residence at which the person is detained or is required to remain, if the Judge is of the view that it is necessary to do so on account of the respondent's state of health.
- (6) A condition included in a suspect compulsion order or juvenile compulsion order under any of subsections (2) to (5) is subject to any condition included in the order under subsection (1).

Section 24A: inserted, on 15 April 2004, by section 18 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24A(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24A(4): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 24A(4)(a): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 24A(4)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24A(5): substituted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

24B Parent or other person having care to be notified if Police suggest variation of juvenile compulsion order

- (1) If a condition is included in a juvenile compulsion order under section 24A(2) and a constable suggests varying the place where, the date on which, or the place where and the date on which a respondent is to attend to give a bodily sample pursuant to that order, the constable must take all reasonable steps to notify a parent or other person having the care of the respondent of the suggested variation.
- (2) If a condition is included in a juvenile compulsion order under section 24A(4)(b) and a constable suggests varying the date on which a respondent is to attend to give a bodily sample pursuant to that order, the constable must take all reasonable steps to notify a parent or other person having care of the respondent of the suggested variation.

Section 24B: inserted, on 15 April 2004, by section 18 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24B(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24B(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Part 2A

Obtaining buccal sample from suspect who is child or was child when offence for which suspect may not be lawfully prosecuted committed

Part 2A: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Authority to obtain buccal sample from suspect

Heading: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

24C Authority to obtain buccal sample from suspect

- (1) In a criminal investigation in respect of an offence committed or believed to have been committed by a suspect who is a child or was a child at the time the offence was committed and for which, in accordance with section 272 of the Oranga Tamariki Act 1989, that suspect may not be lawfully prosecuted under the Criminal Procedure Act 2011, a buccal sample may be taken from that suspect, for the purposes of the investigation, on behalf of any constable, only if—
 - (a) both the suspect and a parent of the suspect have consented to the taking of a buccal sample under section 24G; and
 - (b) the sample is taken in accordance with the procedures set out in Part 4.
- (2) This section is subject to section 72.
- (3) Every reference in this Part to an offence for which a suspect who is or was a child at the time the offence was committed may not be lawfully prosecuted is a reference to an offence for which, in accordance with section 272 of the Oranga Tamariki Act 1989, that suspect may not be lawfully prosecuted under the Criminal Procedure Act 2011.

Section 24C: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 24C(1): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 24C(3): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Obtaining buccal sample from suspect

Heading: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

24D Request to consent to taking of buccal sample from suspect

A constable may request that a suspect give a buccal sample (being a **Part 2A request**) if—

- (a) there is good cause to suspect that the suspect has committed or may have committed an offence for which the suspect may not lawfully be

prosecuted (because the suspect is a child or was a child at the time the offence was committed); and

- (b) the suspect—
 - (i) is under the age of 17 years; and
 - (ii) is a person in relation to whom an application for a declaration for care or protection may be made on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989 if the suspect's involvement in the offence tends to be confirmed by the analysis of a buccal sample; and
- (c) a constable has reasonable grounds to believe that the analysis of a buccal sample from the suspect would tend to confirm or disprove the suspect's involvement in the commission of the offence.

Section 24D: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24D: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24D(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 24D(b)(ii): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 24D(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

24E Police obligations if Part 2A request made

If a constable makes a Part 2A request, the Police must—

- (a) hand to the suspect a written notice containing the particulars specified in section 24F(b); and
- (b) ensure that a copy of the notice is also handed to a parent of the suspect; and
- (c) inform the person being handed the notice or a copy of the notice in a manner and in a language that the person is likely to understand,—
 - (i) of the offence in respect of which the request is made; and
 - (ii) that a constable has reasonable grounds to believe that the analysis of a buccal sample from the suspect would tend to confirm or disprove the suspect's involvement in the offence; and
 - (iii) that the buccal sample may not be taken unless both the suspect and a parent of the suspect consent to the taking of the buccal sample; and
 - (iv) that the suspect is under no obligation to give the buccal sample; and
 - (v) that no parent of the suspect is under any obligation to consent to the taking of the buccal sample; and

- (vi) that if the suspect or a parent of the suspect consents to the taking of the buccal sample, he or she may, at any time before the buccal sample is taken, withdraw his or her consent to it being taken; and
- (vii) that the suspect and any parent of the suspect may wish to consult a lawyer before deciding whether or not to consent to the buccal sample being taken; and
- (viii) that the suspect or any parent of the suspect is able to consult with any person (not being a constable) that he or she wishes before deciding whether or not to consent to the buccal sample being taken; and
- (ix) that the sample will be analysed and may, if it tends to confirm the suspect's involvement in the offence, be used to make an application for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989, but may not be used to prosecute the suspect for any offence.

Section 24E: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24E: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24E(c)(ii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24E(c)(viii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24E(c)(ix): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

24F Form and content of notice

A notice given under section 24E(a) must—

- (a) be in the prescribed form; and
- (b) contain the following particulars:
 - (i) a statement that it is believed that the suspect has or may have committed an offence for which he or she may not be lawfully prosecuted and that the suspect is being requested to consent to the giving of a buccal sample in relation to that offence:
 - (ii) a statement that there are reasonable grounds to believe that analysis of the buccal sample will tend to confirm or disprove the suspect's involvement in the commission of the offence:
 - (iii) a statement that the buccal sample may not be taken from the suspect unless both the suspect and a parent of the suspect consent to the taking of the buccal sample:
 - (iv) a statement that the suspect is under no obligation to give the buccal sample:

- (v) a statement that no parent of the suspect is under any obligation to consent to the giving of the buccal sample:
- (vi) a statement that the suspect and any parent of the suspect may wish to consult a lawyer before consenting to the taking of the buccal sample:
- (vii) a statement that the suspect or any parent of the suspect is able to consult with any person (not being a constable) that he or she wishes before consenting to the buccal sample being taken:
- (viii) a statement that, if the suspect or a parent of the suspect consents to the taking of the sample, he or she may, at any time before the buccal sample is taken, withdraw his or her consent to it being taken:
- (ix) a statement that the sample will be analysed and may, if it tends to confirm the suspect's involvement in the offence, be used to make an application for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989, but may not be used to prosecute the suspect for any offence:
- (x) a summary of section 49A relating to who may take the buccal sample:
- (xi) a statement that a buccal sample may be taken in the presence of a parent:
- (xii) a summary of section 52A relating to who must be present if the suspect takes a buccal sample himself or herself:
- (xiii) a statement that the suspect or a parent of the suspect may request that the buccal sample be taken in the presence of a lawyer, or another person, of the suspect's or parent's choice:
- (xiv) a summary of sections 56A and 59 relating to the procedures for the analysis of the sample and disclosure of the results of the analysis:
- (xv) a reference to section 61A relating to the disposal of the buccal sample and of any information derived from any analysis of the buccal sample:
- (xvi) any other particulars that may be prescribed under regulations made under this Act.

Section 24F: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24F(b)(i): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 24F(b)(vii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 24F(b)(ix): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

24G Consent to taking of buccal sample

- (1) A consent to the taking of a buccal sample as a result of a Part 2A request is valid if the consent—
 - (a) is in writing and signed by the person giving the consent; or
 - (b) is given orally and recorded on a video record.
- (2) If consent is given in writing, the consent must be signified on the notice required by section 24E(a) to be handed to the suspect at the time of the making of the request, or on a copy of that notice.
- (3) If consent is recorded on a video record, the video record must clearly show,—
 - (a) in the case of a consent given by a suspect,—
 - (i) the making of the request to the suspect; and
 - (ii) the handing to the suspect of the notice required by section 24E(a); and
 - (iii) the giving of consent to the taking of the buccal sample; and
 - (b) in the case of consent given by a parent of a suspect,—
 - (i) the handing to that person of a copy of the notice required by section 24E(b) or an acknowledgement by that person that a copy of that notice has been given to him or her; and
 - (ii) the giving of consent to the taking of the buccal sample from the suspect.

Section 24G: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24G(1)(b): amended, on 27 March 2008, by section 6(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

Section 24G(3): amended, on 27 March 2008, by section 6(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

24H Withdrawal of consent

- (1) A suspect or a suspect's parent who has given consent to the taking of a buccal sample as a result of a Part 2A request may, at any time before the sample is taken, withdraw that consent either orally or in writing.
- (2) If the consent is withdrawn orally, the withdrawal must be recorded in writing by a constable as soon as is practicable.

Section 24H: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 24H(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

24I Buccal sample to be forwarded to approved agency as soon as practicable

If a buccal sample is taken as a result of a Part 2A request, the Police must ensure that the buccal sample is forwarded to an approved agency as soon as is practicable after it is taken.

Section 24I: inserted, on 15 April 2004, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Part 2B

Taking bodily sample from person arrested or intended to be charged with imprisonable offence or offence listed in Part 3 of Schedule

Part 2B: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Part 2B heading: amended, on 5 December 2011, by section 43 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24J Authority to take bodily sample from person of or over 17 years arrested or intended to be charged with imprisonable offence or offence listed in Part 3 of Schedule

- (1) A constable may require a person who is of or over the age of 17 years to give a bodily sample if either—
 - (a) the person is in the lawful custody of the Police and being detained for committing an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule and is at a Police station or at any other place being used for Police purposes; or
 - (b) a constable has good cause to suspect the person of committing an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule and intends to bring proceedings against the person in respect of that offence by filing a charging document.
- (2) The sample must be taken in accordance with the procedures set out in Part 4.
- (3) If subsection (1)(b) applies, a constable may detain the person at any place—
 - (a) in order for the bodily sample to be taken; and
 - (b) only for the period necessary in order for the bodily sample to be taken.

Section 24J: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 24J heading: amended, on 5 December 2011, by section 44(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 24J(1)(a): amended, on 5 December 2011, by section 44(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 24J(1)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 24J(1)(b): amended, on 5 December 2011, by section 44(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24K Authority to take bodily sample from young person arrested or intended to be charged with relevant offence

- (1) A constable may require a young person to give a bodily sample if either—
 - (a) the person has been arrested for a relevant offence; or
 - (b) a constable has good cause to suspect the person of committing a relevant offence and intends to bring proceedings against the person in respect of that offence by filing a charging document.
- (2) The sample must be taken in accordance with the procedures set out in Part 4.
- (3) If subsection (1)(b) applies, a constable may detain the person at any place—
 - (a) in order for the bodily sample to be taken; and
 - (b) only for the period necessary in order for the bodily sample to be taken.

Section 24K: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 24K(1)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

24L Relationship to Part 2

Nothing in Part 2 limits the authority to take a bodily sample conferred by section 24J or 24K.

Section 24L: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24M Information to be given to person

If a constable proposes to require a person to give a bodily sample under section 24J or 24K, the constable must—

- (a) hand to the person a written notice containing the particulars specified in section 24N; and
- (b) inform the person in a manner and in language that the person is likely to understand—
 - (i) what the triggering offence is; and
 - (ii) of the effect of sections 24P and 24R; and
 - (iii) of the effect of sections 48A, 49, 49A, 50A, and 54A; and
 - (iv) that the sample will be analysed; and
 - (v) that a DNA profile derived from the sample cannot be used as evidence in criminal proceedings; and
 - (vi) of the effect of section 26(ab) and (ac); and
 - (vii) of the effect of section 60A.

Section 24M: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24N Form and content of notice

A notice given under section 24M—

- (a) must be in the prescribed form; and
- (b) must contain the following particulars:
 - (i) a reference to the triggering offence;
 - (ii) a statement of the effect of sections 24P and 24R;
 - (iii) a summary of the provisions of sections 48A, 49, 49A, 50A, and 54A relating to the procedure for taking the sample;
 - (iv) a summary of the provisions of sections 55, 56, and 56A relating to the procedures for the analysis of the sample and the disclosure of the results of the analysis;
 - (v) a statement of the effect of section 26(ab) and (ac);
 - (vi) a reference to the provisions of section 60A relating to the destruction of the sample and of any information derived from any analysis of the sample;
 - (vii) any other particulars that may be prescribed.

Section 24N: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24O Part 2B temporary databank

There may be maintained (whether in computerised form or otherwise), by or on behalf of the Police, a database of DNA profiles derived from bodily samples taken under this Part.

Section 24O: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24P Information that may be kept on Part 2B temporary databank

- (1) A DNA profile derived from a bodily sample taken under this Part may be stored on a Part 2B temporary databank only if—
 - (a) the person from whom the bodily sample was taken has been charged with the triggering offence, or a related offence; and
 - (b) circumstances have not yet arisen where—
 - (i) records of the DNA profile must be destroyed under section 60A; or
 - (ii) the DNA profile may be stored on a DNA profile databank under section 26(ab) or (ac).
- (2) In this section, **related offence** means—
 - (a) a related imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, if the bodily sample was taken under section 24J; or

- (b) a related relevant offence, if the bodily sample was taken under section 24K.

Section 24P: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 24P(1)(a): amended, on 5 December 2013, by section 5(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 24P(2): inserted, on 5 December 2013, by section 5(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

24Q Removal of DNA profiles from Part 2B temporary databank

When either of the circumstances in section 24P(b)(i) or (ii) has arisen in relation to a DNA profile, the DNA profile must be removed from the Part 2B temporary databank.

Section 24Q: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24R Access to and disclosure of information on Part 2B temporary databank

- (1) Subject to subsections (2) to (5), no person may have access to any information stored on a Part 2B temporary databank, and no person may disclose any of that information, except for 1 or more of the following purposes:
- (a) to compare with unidentified DNA information obtained from the scenes of offences under investigation or otherwise in respect of which a conviction or further conviction is yet to be obtained, for the purpose of a criminal investigation by the Police into the triggering offence or any other offence;
 - (b) for the purpose of making the information available, in accordance with the Privacy Act 1993, to the person to whom the information relates;
 - (c) for the purpose of administering the Part 2B temporary databank.
- (2) For the purposes of subsection (1)(a), DNA information is unidentified if no Police investigation has established the particular person to whom the DNA information relates.
- (3) Nothing in this section applies in relation to information that does not identify any person.
- (4) Nothing in this section limits the jurisdiction of the Privacy Commissioner under the Privacy Act 1993 to investigate any complaint made under Part 8 of that Act.
- (5) Nothing in this section prohibits access to, or the disclosure of, any information for the purposes of—
- (a) any application for a compulsion order; or
 - (b) the issuing of a databank compulsion notice or the making of a Part 3 order; or
 - (c) the prosecution of an offence against section 77(2).

Section 24R: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

24S Access to and use of bodily samples taken under this Part

No person may have access to, and no person may use, any bodily sample taken from any person under this Part except for the purpose of deriving from that sample a DNA profile—

- (a) for the purposes of this Part; and
- (b) where applicable, for storage on a DNA profile databank in accordance with section 26(ab) or (ac).

Section 24S: inserted, on 6 September 2010, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Part 3
DNA profile databank

DNA profile databank

25 DNA profile databank

There may be maintained (whether in computerised form or otherwise), by or on behalf of the Police, a database of DNA profiles derived from bodily samples taken pursuant to this Act.

Section 25: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

26 Information that may be kept on DNA profile databank

Subject to sections 60, 60A, and 62, the following information may be stored on a DNA profile databank:

- (a) any DNA profile derived from a bodily sample taken from any person pursuant to Part 2, where—
 - (i) that person is convicted of the offence in respect of which the sample is taken, or of a related offence, (unless the conviction is subsequently quashed); and
 - (ii) the offence of which the person is convicted is an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule:
- (ab) any DNA profile derived from a bodily sample taken from a person under Part 2B if—
 - (i) that person is convicted of the triggering offence, or of a related imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule (unless the conviction is subsequently quashed); and

- (ii) the offence of which the person is convicted is an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
 - (iii) in the case of a person who was a young person on the date of the offence, a sentence of imprisonment or of a non-custodial nature is imposed for the offence or the Youth Court makes an order under section 283 of the Oranga Tamariki Act 1989:
- (ac) any DNA profile derived from a bodily sample taken from a young person under Part 2B if—
- (i) the Youth Court made an order under section 282 of the Oranga Tamariki Act 1989 discharging the charge relating to the offence after finding that the offence was proved; and
 - (ii) the offence in relation to which the order was made is a relevant offence, or a related offence:
- (b) subject to section 36, any DNA profile derived from a bodily sample taken from any person pursuant to this Part.

Section 26: amended, on 6 September 2010, by section 8(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 26(a)(ii): amended, on 5 December 2011, by section 45(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26(ab): inserted, on 6 September 2010, by section 8(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26(ab)(i): amended, on 5 December 2011, by section 45(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26(ab)(ii): amended, on 5 December 2011, by section 45(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26(ab)(iii): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 26(ab)(iii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26(ac): inserted, on 6 September 2010, by section 8(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26(ac)(i): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 26(ac)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26(ac)(i): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 26(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

26A Removal of certain DNA profiles from DNA profile databank

- (1) A DNA profile stored on a DNA profile databank must be removed from the databank and destroyed before the expiry of all fixed periods (**retention periods**) specified in subsection (4) that apply to the storage of the profile.
- (2) In the case of a person's DNA profile stored under section 26(a) or (ab), the storage of the profile is subject to subsection (4) if—
 - (a) the person was a young person on the date of the offence; and
 - (b) any of the following applies:
 - (i) the Youth Court made an order under 1 or more of paragraphs (a) to (n) of section 283 of the Oranga Tamariki Act 1989; or
 - (ii) the Youth Court made an order under section 283(o) of the Oranga Tamariki Act 1989 but no court imposed a sentence of imprisonment for the offence; or
 - (iii) the District Court (rather than the Youth Court) convicted the person of the offence but did not impose a sentence of imprisonment.
- (3) In the case of a profile stored under section 26(ac), the storage of the profile is subject to subsection (4) if—
 - (a) the person was a young person on the date of the offence; and
 - (b) the Youth Court made an order under section 282 of the Oranga Tamariki Act 1989 discharging the charge relating to the offence after finding that the offence was proved.
- (4) The retention periods and effect of certain subsequent offences are as follows:

| Sentence or order | Retention period for order or conviction | Retention period for subsequent offence |
|---|--|--|
| Section 26(a) or (ab): section 283(a) to (n) order made by the Youth Court | 10 years after date of that section 283 order | If a section 282 order is subsequently made during that 10-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the 10-year period. |
| Section 26(a) or (ab): section 283(o) order made by the Youth Court but no imprisonment | 10 years after date of section 283(o) order | If a section 282 order is subsequently made during that 10-year period after the offence is proved, a further retention period of 4 years applies and runs |

| Sentence or order | Retention period for order or conviction | Retention period for subsequent offence |
|--|--|---|
| Section 26(a) or (ab): convicted by the District Court but no imprisonment | 10 years after date of conviction | concurrently with the 10-year period. If a section 282 order is subsequently made during that 10-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the 10-year period. |
| Section 26(ac): section 282 order made after offence proved | 4 years after date of section 282 order | If a section 283 order is subsequently made during that 4-year period, a further retention period of 10 years applies and runs concurrently with the 4-year period. If the person is subsequently convicted by the District Court without imprisonment during that 4-year period, a further retention period of 10 years applies and runs concurrently with the 4-year period. If another section 282 order is subsequently made during that 4-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the first 4-year period. |

- (5) A person's DNA profile stored under section 26 may, unless otherwise provided by this Act, be stored indefinitely on a DNA profile databank if any of the following apply:

- (a) if the profile is stored in relation to an offence and a court imposes a sentence of imprisonment for the offence:
- (b) if the profile is stored in relation to an offence and a retention period initially applies to the offence and, during that period, a subsequent order or conviction is made or entered against the person that is not specifically provided for in the third column of the table in subsection (4):

Examples

During a 10-year period for a section 283 order, another section 283 order is made against the person or a conviction (with or without imprisonment) is entered against the person by any court.

During a 10-year period for a conviction by the District Court, a section 283 order is made against the person or another conviction (with or without imprisonment) is entered against the person by any court.

During a 4-year retention period for a section 282 order, 2 further section 282 orders are made against the person.

- (c) in any other case (whether the person is a young person or of or over the age of 17 years), no fixed retention period is specified by this Act.
- (6) The profile must be removed from the databank no later than 10 years after the date on which the person ceases to be subject to a sentence of imprisonment in respect of the offence, or, in any other case, no later than 10 years after the date of conviction, if—
- (a) either—
 - (i) the person to whom the profile relates was a young person on the date of the offence referred to in section 26(a) or, as the case may be, section 26(ab), and a court imposed a community-based sentence in respect of the offence; or
 - (ii) the person to whom the profile relates was of or over 17 years of age on the date of the offence referred to in section 26(a) or, as the case may be, section 26(ab); and
 - (b) the conviction was for an offence that was not a relevant offence at the time of the conviction; and
 - (c) the person has not been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule since the date of the conviction.

Section 26A: inserted, on 6 September 2010, by section 9 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26A(2)(b)(i): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 26A(2)(b)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26A(2)(b)(ii): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 26A(2)(b)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26A(2)(b)(iii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26A(3)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 26A(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26A(3)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 26A(4): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26A(5)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26A(6): added, on 5 December 2011, by section 46 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

26B Certain young persons may apply for removal of DNA profiles from DNA profile databank

- (1) This section applies to a person if,—
 - (a) before the commencement of this section,—
 - (i) a DNA profile of the person was taken and stored on a DNA databank under Part 2 when the person was a young person; and
 - (ii) the Youth Court made an order in relation to the person under section 282 or 283 of the Oranga Tamariki Act 1989 in relation to an offence but no court imposed a sentence of imprisonment for the offence; and
 - (b) within 10 years after the date of that order, the person is not convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule.
- (2) The person's DNA profile must be removed from the DNA databank and destroyed if the person applies in writing to the Commissioner requesting the removal of the profile.

Section 26B: inserted, on 6 September 2010, by section 9 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 26B(1)(a)(ii): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 26B(1)(a)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 26B(1)(b): amended, on 5 December 2011, by section 47 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

27 Access to and disclosure of information on DNA profile databank

- (1) Subject to subsections (2) to (4), no person may have access to any information stored on a DNA profile databank, and no person shall disclose any such information, except for 1 or more of the following purposes:
- (a) for the purpose of forensic comparison in the course of a criminal investigation by the Police;
 - (b) for the purpose of making the information available, in accordance with the Privacy Act 1993, to the person to whom the information relates;
 - (c) for the purpose of administering the DNA profile databank;
 - (d) for the purpose of responding to a request under the Mutual Assistance in Criminal Matters Act 1992 if—
 - (i) access to the information requested is authorised by the Attorney-General; and
 - (ii) the request relates to an offence that corresponds to an offence in New Zealand that is punishable by a term of imprisonment of more than 1 year.
- (2) Nothing in this section applies in relation to information that does not identify any person.
- (3) Nothing in this section limits the jurisdiction of the Privacy Commissioner under the Privacy Act 1993 to investigate any complaint made under Part 8 of that Act.
- (4) Nothing in this section prohibits access to, or the disclosure of, any information for the purposes of—
- (a) any application for a compulsion order; or
 - (ab) the issuing of a databank compulsion notice or the making of a Part 3 order; or
 - (b) the prosecution of an offence against section 77(2).

Section 27(1)(d): inserted, on 4 February 2016, by section 4 of the Criminal Investigations (Bodily Samples) Amendment Act 2015 (2015 No 98).

Section 27(4)(ab): inserted, on 15 April 2004, by section 20 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

28 Access to and use of bodily samples held for DNA profile databank purposes

No person may have access to, and no person may use, any bodily sample—

- (a) to which section 60(2) applies; or
- (b) taken from any person pursuant to this Part—

except for the purpose of deriving from that sample a DNA profile for storage on a DNA profile databank.

Section 28 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 28: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Authority to obtain bodily sample for DNA profile databank

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

29 Authority to take bodily sample for DNA profile databank

Subject to section 72, a bodily sample may be taken from a person for the purposes of including that person's DNA profile on a DNA profile databank only if—

- (a) either—
 - (i) that person consents to the taking of that sample in accordance with section 34; or
 - (ii) the sample is taken pursuant to a databank compulsion notice; and
- (b) the sample is taken in accordance with the procedures set out in Part 4.

Section 29 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 29: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 29(a)(ii): substituted, on 15 April 2004, by section 21 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Obtaining bodily sample by consent

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

30 Request to consent to taking of bodily sample

- (1) For the purposes of obtaining a DNA profile for storage on a DNA profile databank, a constable may request any person who is of or over the age of 17 years to give a bodily sample.
- (2) On making a request under subsection (1), the constable shall—
 - (a) hand to the person to whom the request is made a written notice containing the particulars specified in section 31(b); and
 - (b) inform the person, in a manner and in language that the person is likely to understand,—
 - (i) that the purpose of the request is to obtain information that will be stored on a DNA profile databank and that may be used by the Police in the investigation of criminal offences; and
 - (ii) that the person is under no obligation to give the bodily sample requested; and

- (iii) that if the person consents to the taking of the sample, the person may, at any time before the sample is taken, withdraw that consent; and
- (iv) that the person may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample; and
- (v) that the sample will be analysed, and information derived from the analysis may result in the person being charged with a criminal offence; and
- (vi) that, except in certain circumstances, the person may at any time withdraw that person's consent to the use of the bodily sample.

Section 30 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 30(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 30(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 30(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 30(2)(b)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 30(2)(b)(vi): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

31 Form and content of notice

Every notice given pursuant to section 30(2)(a)—

- (a) shall be in the prescribed form; and
- (b) shall contain the following particulars:
 - (i) a statement setting out the purpose for which the sample is required;
 - (ii) a statement that the person is under no obligation to give the sample;
 - (iii) a statement that if the person consents to the taking of the sample, the person may, at any time before the sample is taken, withdraw that consent;
 - (iv) a statement that the person may wish to consult a lawyer before deciding whether or not to consent to the taking of the sample;
 - (v) a statement that the sample will be analysed, and information derived from that analysis may result in the person being charged with a criminal offence;
 - (vi) a summary of the provisions of sections 48, 49, and 49A relating to the procedure for taking the sample:

- (vii) a statement that the person may request that the sample be taken in the presence of a lawyer, or another person, of the person's own choice:
- (viii) a summary of the provisions of sections 55, 56, 56A, and 59 relating to the procedures for the analysis of that sample and the disclosure of the results of the analysis:
- (ix) a summary of the provisions of section 27 relating to the use of any DNA profile obtained from the sample:
- (x) a summary of the provisions of section 36 relating to the removal of information from a DNA profile databank:
- (xi) a summary of the provisions of sections 37 and 38 relating to the retention of a bodily sample and a DNA profile notwithstanding withdrawal of consent under section 36:
- (xii) such other particulars as may be prescribed.

Section 31(b)(vi): amended, on 15 April 2004, by section 22(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 31(b)(vii): substituted, on 15 April 2004, by section 22(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 31(b)(viii): amended, on 15 April 2004, by section 22(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 31(b)(xi): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

32 Section 30 not to apply to persons under 17

Nothing in section 30 applies in respect of a person who is under the age of 17 years, and no such person shall be capable of consenting to the taking of a bodily sample in response to a request made under that section.

Section 32: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

33 Dual requests

A databank request made to any person may be made in conjunction with a suspect request, and, in any such case,—

- (a) the constable making the requests shall, in addition to informing the person of the matters set out in sections 6(2)(b) and 30(2)(b), inform the person—
 - (i) that he or she may consent to the taking of a bodily sample in response to both requests, or in response to only one of the requests, or may refuse both of the requests; and
 - (ii) that if he or she consents to the taking of a bodily sample in response to only one of the requests, then, subject to section 26(a), information derived from the analysis of that sample may be used for the purposes of that request only; and

- (b) in addition to handing the person the notices required by sections 6(2)(a) and 30(2)(a), the constable shall hand the person a written notice in the prescribed form containing—
 - (i) a statement specifying the matters set out in subparagraphs (i) and (ii) of paragraph (a); and
 - (ii) such other particulars as may be prescribed; and
- (c) the following provisions of this Act shall apply subject to the following modifications:
 - (i) section 9(3)(a)(ii) shall be read as if there were inserted, after the word “Act”, the words “and the notice required by section 33(b)”:
 - (ii) section 34(3)(b) shall be read as if there were inserted, after the word “Act”, the words “and the notice required by section 33(b)”.

Section 33(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 33(a)(i): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 33(a)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 33(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

34 Consent to taking of bodily sample

- (1) No consent to the taking of a bodily sample in response to a databank request shall be valid unless—
 - (a) it is in writing and signed by the person giving the consent; or
 - (b) it is given orally and recorded on a video record.
- (2) Where any such consent is in writing, the consent shall be signified on the notice required by section 30(2)(a) to be handed to the person at the time of the making of the databank request, or on a copy of that notice.
- (3) Where any such consent is recorded on a video record, the video record must clearly show—
 - (a) the making of the databank request to the person concerned; and
 - (b) the handing to that person of the notice required by section 30(2)(a) of this Act; and
 - (c) the giving of consent to the taking of the sample.
- (4) Any person who gives such consent may, at any time before the sample is taken, withdraw that consent, either orally or in writing.
- (5) Where any such consent is withdrawn orally, that withdrawal shall be recorded in writing by a constable as soon as practicable.

Section 34 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 34(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 34(1)(b): amended, on 27 March 2008, by section 7(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

Section 34(3): amended, on 27 March 2008, by section 7(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9).

Section 34(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

35 Right of person in custody to consult lawyer

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

36 Withdrawal of consent after sample taken

- (1) Subject to subsections (2) and (3) and to sections 37 and 38, where, pursuant to a consent given in accordance with section 34, a bodily sample is taken from any person, that person may at any time, by notice in writing to the Commissioner, withdraw that person's consent to the use of that bodily sample, and in any such case the Commissioner shall ensure that—
 - (a) the sample; and
 - (b) every record of any analysis of the sample carried out on behalf of any constable; and
 - (c) every record, to the extent that it contains—
 - (i) information about the sample; and
 - (ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,—

are destroyed as soon as practicable.
- (2) Nothing in subsection (1) applies in respect of any bodily sample, or any information derived from any analysis of any bodily sample, in any case where, after the sample has been taken, the person from whom the sample was taken has been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule (unless that conviction has been quashed).
- (3) Where,—

- (a) a databank request has been made in conjunction with a suspect request; and
- (b) the person to whom the requests have been made has consented to the taking of a bodily sample in response to both requests; and
- (c) pursuant to subsection (1), the person withdraws his or her consent to the use of the bodily sample for the purposes of the databank request,—

then, notwithstanding anything in subsection (1), that bodily sample and any information derived from any analysis of that sample may continue to be dealt with in accordance with the consent given in response to the suspect request.

Section 36(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 36(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 36(2): amended, on 5 December 2013, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 36(2): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 36(3): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 36(3)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 36(3)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

37 Withdrawal of consent suspended

- (1) Where,—
 - (a) pursuant to section 36(1), any person withdraws that person's consent to the use of a bodily sample; and
 - (b) at the time of the withdrawal of that consent,—
 - (i) a suspect request has been made to that person, and either that person has not refused to consent to the taking of a bodily sample in response to that request, or that person has consented to the taking of such a sample, but the sample has not yet been obtained; or
 - (ii) the making of a suspect request to that person is reasonably in contemplation; or
 - (iii) proceedings on an application under section 13 in respect of that person are pending; or
 - (iv) the making of such an application is reasonably in contemplation; or
 - (v) a suspect compulsion order is in force in respect of that person, but a bodily sample has yet to be obtained from him or her in accordance with that order,—

then, notwithstanding anything in section 36(1), the bodily sample in respect of which that consent is withdrawn, and any information derived from any analysis of that sample, may be retained, and shall be dealt with in accordance with this section and section 38.

- (2) Where, at the time of the withdrawal of the consent, subsection (1)(b)(i) applies, the following provisions shall apply:
- (a) if a bodily sample is obtained from the person in response to the suspect request, the withdrawal of consent shall take effect in accordance with section 36(1):
 - (b) if for any reason no bodily sample is obtained from the person in response to the suspect request within the period of 28 days after notice of the withdrawal of consent is received by the Commissioner, then, subject to paragraph (c) of this subsection, the withdrawal of consent shall take effect, in accordance with section 36(1), on the expiry of that period:
 - (c) if, before the expiry of the period referred to in paragraph (b), an application is made under section 13 in respect of the person, subsection (4) of this section shall thereafter apply as if, at the time of the withdrawal of the consent, subsection (1)(b)(iii) of this section applied.
- (3) Where, at the time of the withdrawal of the consent, subsection (1)(b)(ii) applies, the following provisions shall apply:
- (a) if a suspect request is not made to the person within the period of 14 days after notice of the withdrawal of consent is received by the Commissioner, the withdrawal of consent shall take effect, in accordance with section 36(1), on the expiry of that period:
 - (b) if,—
 - (i) before the expiry of the period referred to in paragraph (a), a suspect request is made to the person; and
 - (ii) a bodily sample is obtained from the person in response to the suspect request,—the withdrawal of consent shall take effect in accordance with section 36(1):
 - (c) if,—
 - (i) before the expiry of the period referred to in paragraph (a), a suspect request is made to the person; but
 - (ii) for any reason no bodily sample is obtained from the person in response to the suspect request within the period of 28 days after the making of the suspect request,—then, subject to paragraph (d), the withdrawal of consent shall take effect, in accordance with section 36(1), on the expiry of that period of 28 days:

- (d) if, before the expiry of the period referred to in paragraph (c)(ii), an application is made under section 13 in respect of the person, subsection (4) of this section shall thereafter apply as if, at the time of the withdrawal of the consent, subsection (1)(b)(iii) of this section applied.
- (4) Where, at the time of the withdrawal of the consent, subsection (1)(b)(iii) applies, the following provisions shall apply:
- (a) if—
- (i) the application for a suspect compulsion order (in this subsection referred to as the initial application) is withdrawn or refused; and
 - (ii) no further application for a suspect compulsion order is made in respect of the person within the period of 28 days after the withdrawal or refusal of the application,—
- then the withdrawal of consent shall take effect, in accordance with section 36(1), on the expiry of that period:
- (b) if—
- (i) the initial application is granted; and
 - (ii) a bodily sample is obtained from the person in accordance with the suspect compulsion order,—
- then the withdrawal of consent shall take effect in accordance with section 36(1):
- (c) if—
- (i) the initial application is granted; but
 - (ii) for any reason, no bodily sample is obtained from the person in accordance with the suspect compulsion order,—
- then section 38 shall apply:
- (d) if—
- (i) the initial application is withdrawn or refused; and
 - (ii) a further application for a suspect compulsion order is made in respect of the person within the period of 28 days after the withdrawal or, as the case requires, the refusal of the initial application,—
- then,—
- (iii) if that further application is withdrawn or refused, the withdrawal of consent shall take effect in accordance with section 36(1):
 - (iv) if that further application is granted, paragraphs (b) and (c) shall apply as if that application were the initial application.
- (5) Where, at the time of the withdrawal of the consent, subsection (1)(b)(iv) applies, the following provisions shall apply:

- (a) if no application is made under section 13 in respect of the person within the period of 28 days after notice of the withdrawal of consent is received by the Commissioner, the withdrawal of consent shall take effect in accordance with section 36(1):
 - (b) if, before the expiry of the period referred to in paragraph (a), an application is made under section 13 in respect of the person, subsection (4) of this section shall thereafter apply as if, at the time of the withdrawal of the consent, subsection (1)(b)(iii) of this section applied.
- (6) Where, at the time of the withdrawal of the consent, subsection (1)(b)(v) applies, the following provisions shall apply:
- (a) if a bodily sample is obtained from the person in accordance with the suspect compulsion order, the withdrawal of the consent shall take effect in accordance with section 36(1):
 - (b) if, for any reason, no bodily sample is obtained from the person in accordance with the suspect compulsion order, then section 38 shall apply.

Section 37(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(1)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(1)(b)(i): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(1)(b)(v): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(2)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(2)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(3)(b)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(3)(c)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(4)(b)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(4)(c)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(6)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 37(6)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

38 Retention of sample despite withdrawal of consent

Where subsection (4)(c) or subsection (6)(b) of section 37 applies in respect of any bodily sample, the following provisions shall apply:

- (a) sections 26(a) and 60 shall apply in respect of the bodily sample, and any information derived from any analysis of that sample, as if the bodily sample had been taken, pursuant to Part 2,—
 - (i) on the date on which the suspect compulsion order referred to in subsection (4)(c) or, as the case requires, subsection (6)(b) of section 37 was made; and
 - (ii) in respect of the offence to which the order relates:
- (b) nothing in section 61 shall apply in respect of the bodily sample or any such information:
- (c) the bodily sample and any such information may be retained until—
 - (i) their destruction is required by section 60; or
 - (ii) in the case of a DNA profile derived from the bodily sample, section 26(a) authorises the storage of that DNA profile on a DNA profile databank,—

but, in the meantime, no DNA profile derived from the bodily sample shall be used for the purposes of any criminal investigation or any criminal proceedings (other than the investigation or prosecution of any offence against section 77(2)).

Section 38: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 38(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 38(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 38(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 38(c)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Obtaining bodily sample by databank compulsion notice

Heading: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

39 Issue and service of databank compulsion notice

- (1) A constable who is of or above the level of position of inspector may issue a databank compulsion notice requiring a person to give a bodily sample if—
 - (a) the person has been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
 - (b) the conviction is one to which this Part applies under section 4.
- (2) If a databank compulsion notice is issued, the Police must—
 - (a) serve the notice on the person to whom it relates by handing the notice to the person; and

- (b) if that person is under the age of 17 years, take all reasonable steps to serve a copy of the notice on a parent or other person having the care of that person by giving him or her a copy of it; and
 - (c) explain the contents of the notice to the person being served in a manner, and in a language, that the person is likely to understand.
- (3) If a person in relation to whom a databank compulsion notice is issued is not detained under a sentence of imprisonment for the imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule in relation to which it is issued, the notice—
 - (a) must be served on a date as soon as is reasonably practicable after the person's conviction for the imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule is entered; but
 - (b) need not be served on a date before the person is sentenced for the imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
 - (c) must be served on a date that allows for the taking of a bodily sample in accordance with section 39C(3) (which describes the dates between which a person who is not detained under a sentence of imprisonment may be required to attend to give a bodily sample).
- (4) If a person in relation to whom a databank compulsion notice is issued is detained under a sentence of imprisonment for the imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule in relation to which it is issued, the notice must be served on a date that allows for the taking of a bodily sample in accordance with section 39C(4) (which describes the dates between which a person who is detained under a sentence of imprisonment may be required to attend to give a bodily sample).

Section 39: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 39(1): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 39(1)(a): amended, on 5 December 2011, by section 48(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 39(3): amended, on 5 December 2011, by section 48(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 39(3)(a): amended, on 5 December 2011, by section 48(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 39(3)(b): amended, on 5 December 2011, by section 48(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 39(4): amended, on 5 December 2011, by section 48(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

39A Form and content of databank compulsion notice

- (1) Every databank compulsion notice must be in the prescribed form.

- (2) Every databank compulsion notice must contain the following particulars:
- (a) the offence in relation to which the notice is issued:
 - (b) a place where, and a date on which, the person to whom the notice relates is to attend to give a bodily sample, as specified by a constable who is of or above the level of position of inspector under section 39C:
 - (c) a statement that the person in relation to whom the notice is issued must attend to give a bodily sample at the place and on the date specified in the order, unless the person and a constable agree that the person may attend to give the sample at a different place, on an earlier date, or at a different place and on an earlier date than that specified in the notice:
 - (d) a statement that information obtained from the bodily sample will be stored on a DNA profile databank and may be used by the Police in the investigation of criminal offences:
 - (e) a statement that the person in relation to whom the notice is issued may request a databank compulsion notice hearing under section 41(1):
 - (f) a summary of the grounds on which a hearing may be requested under section 41(2):
 - (g) a summary of the provisions of sections 48, 49, and 49A relating to the procedure for taking a bodily sample and a statement that in certain circumstances a Judge may specify the method by which the sample is to be taken:
 - (h) a statement that, if the suspect refuses to allow a bodily sample to be taken, a sample may be taken by force under section 54(2) and, if applicable, section 54(3):
 - (i) a statement that the person may request that the sample be taken in the presence of a lawyer, or another person, of the person's own choice:
 - (j) a summary of the provisions of sections 55, 56, 56A, and 59 relating to the procedure for the analysis of the sample and the disclosure of the results of the analysis:
 - (k) a summary of the provisions of section 27 relating to the use of any DNA profile obtained from the sample:
 - (l) any other particulars that may be prescribed.
- (3) If a databank compulsion notice is issued in relation to a person who is serving a sentence of imprisonment by way of home detention or a sentence of home detention imposed under section 80A of the Sentencing Act 2002, or is on parole subject to residential restrictions imposed under section 15 of the Parole Act 2002, the notice must contain—
- (a) the particulars in subsection (2)(a) and (d) to (l); but
 - (b) instead of the particulars in subsection (2)(b) and (c), the following particulars:

- (i) a statement that the person must give a bodily sample at the residence at which the person is detained or is required to remain; and
 - (ii) a statement that the person and a constable may not agree to vary the place at which the sample is to be given, but may agree to vary the date on which the person is to attend to give the sample to a date earlier than the date specified in the notice.
- (4) Despite subsection (3)(b)(i), a constable who is of or above the level of position of inspector may state in a databank compulsion notice that a person may give a bodily sample at a place other than the residence at which the person is detained or is required to remain, if the constable who is of or above the level of position of inspector issuing the notice is of the view that it is necessary to do so on account of the person's health.

Section 39A: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 39A(2)(b): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 39A(2)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 39A(3): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39A(3)(b)(i): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39A(3)(b)(ii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 39A(4): substituted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39A(4): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

39B Form and content of databank compulsion notice issued in relation to person under age of 17 years

- (1) Every databank compulsion notice issued in relation to a person under the age of 17 years must be in the prescribed form.
- (2) Every databank compulsion notice issued in relation to a person under the age of 17 years must contain the particulars listed in section 39A(2), or if applicable section 39A(3), as well as the following particulars:
 - (a) a statement that a bodily sample may not be taken unless all reasonable steps have been taken to serve a copy of the notice on a parent or other person having the care of that person; and
 - (b) a statement that a parent or other person having the care of that person may request a databank compulsion notice hearing under section 41(3); and
 - (c) a statement that a parent or other person having the care of the person may be present when the bodily sample is taken.

Section 39B: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

39C Date and place for taking of sample to be specified in databank compulsion notice

- (1) A constable who is of or above the level of position of inspector who issues a databank compulsion notice must specify in the notice the place where and the date on which the person to whom the notice relates is to attend to give a bodily sample.
- (2) If a person to whom a databank compulsion notice relates is serving a sentence of imprisonment by way of home detention or a sentence of home detention imposed under section 80A of the Sentencing Act 2002, or is on parole subject to residential restrictions imposed under section 15 of the Parole Act 2002, the place the constable who is of or above the level of position of inspector must specify under subsection (1) must be the residence at which the person is detained or is required to remain, unless the constable who is of or above the level of position of inspector is of the view that it is necessary for the person to give the sample at another place on account of the person's state of health.
- (3) If a person to whom a databank compulsion notice relates is not detained under a sentence of imprisonment for the offence in relation to which the notice is issued at the time the notice is served, the date specified in the notice under subsection (1)—
 - (a) must be later than the 14th day after the date on which the notice is served; and
 - (b) must be before the date 6 months after the date the person's conviction for the offence was entered.
- (4) If the person to whom a databank compulsion notice relates is detained under a sentence of imprisonment for the offence in relation to which the notice is issued at the time the notice is served, the date specified in the notice under subsection (1)—
 - (a) must be later than the 14th day after the date on which the notice is served; and
 - (b) must be before the later of the 2 following dates:
 - (i) the date the person is released from being detained under a sentence of imprisonment for the offence; or
 - (ii) the date 6 months from the date on which the conviction for the offence was entered.

Section 39C: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 39C(1): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 39C(2): substituted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39C(2): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 39C(3): amended, on 5 December 2013, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 39C(3)(b): amended, on 5 December 2013, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 39C(4): amended, on 5 December 2013, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 39C(4)(b)(i): amended, on 5 December 2013, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 39C(4)(b)(ii): amended, on 5 December 2013, by section 7 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

39D Parent or other person having care to be notified if Police suggest variation of databank compulsion notice issued in relation to person under age of 17 years

- (1) If a constable suggests varying, under section 39A(2)(c), the place where, the date on which, or the place where and the date on which a person under the age of 17 years is to attend to give a bodily sample pursuant to a databank compulsion notice, the constable must take all reasonable steps to notify a parent or other person having the care of the person of the suggested variation.
- (2) If a constable suggests varying, under section 39A(3)(b)(ii), the date on which a person under the age of 17 years is to attend to give a bodily sample pursuant to a databank compulsion notice, the constable must take all reasonable steps to notify a parent or other person having the care of the person of the suggested variation.

Section 39D: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 39D(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 39D(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

40 Databank compulsion notice of no effect if conviction quashed

- (1) A databank compulsion notice ceases to have effect if, before a bodily sample is taken pursuant to the notice, the person's conviction for the offence in relation to which the notice has been issued is quashed.
- (2) If subsection (1) applies, a constable must,—
 - (a) as soon as practicable after the conviction is quashed, notify the person to whom the notice relates and, in the case of a person under the age of 17 years, a parent or other person having the care of that person that—
 - (i) the notice is of no effect; and
 - (ii) the person to whom the notice relates is no longer required to give a bodily sample pursuant to that notice; and

- (iii) the notice may be disregarded; and
- (b) as soon as practicable after notifying the person and, if applicable, the person's parent or other person having the care of that person, of the matters listed in paragraph (a), confirm those matters in writing.

Section 40: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 40 heading: amended, on 5 December 2013, by section 8(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 40(1): amended, on 5 December 2013, by section 8(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 40(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Databank compulsion notice hearing

Heading: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

41 Databank compulsion notice hearing may be requested on certain grounds

- (1) A person served with a databank compulsion notice or required to be served with a databank compulsion notice under section 39(2) may, before the date specified in the notice as the date on which the person to whom the notice relates is to attend to give a bodily sample, request a constable to arrange a databank compulsion notice hearing before a Judge of the appropriate court.
- (2) A databank compulsion notice hearing may only be requested on 1 or more of the following grounds:
 - (a) that—
 - (i) the offence in relation to which the databank compulsion notice has been issued is not an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; or
 - (ii) the conviction for the offence in relation to which the databank compulsion notice has been issued is not a conviction to which this Part applies:
 - (b) that the conviction for the offence in relation to which the databank compulsion notice has been issued—
 - (i) was quashed before the notice was issued; or
 - (ii) was quashed after the notice was issued but before the sample was taken and the Police have not notified the person that the notice is of no effect under section 40(2):
 - (c) that all 3 methods available for the taking of a bodily sample will cause serious harm to the person's health on the date specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample:

- (d) that the date specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample is a date on or before the date that is 14 days after the date on which the notice was served:
 - (e) that the date specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample is,—
 - (i) if the person is not detained under a sentence of imprisonment for the offence in relation to which the notice is issued at the time the notice is served, a date that is on or after the date 6 months after the date the person’s conviction for the offence was entered; or
 - (ii) if the person is detained under a sentence of imprisonment for the offence in relation to which the notice is issued at the time the notice is served, a date that is on or after the later of the 2 following dates:
 - (A) the date the person is to be released from being detained under a sentence of imprisonment for the offence; or
 - (B) the date 6 months after the date the person’s conviction for the offence was entered:
 - (f) that the person to whom the databank compulsion notice relates was not served with the notice:
 - (g) if the person in relation to whom the databank compulsion notice has been issued is under the age of 17 years,—
 - (i) that person was not served with the notice; or
 - (ii) that all reasonable steps have not been taken to serve the parent or other person having the care of the person with a copy of the notice.
- (3) If a databank compulsion notice is issued in relation to a person who is under the age of 17 years, that person’s parent or other person having the care of that person may request a hearing under any of the grounds set out in subsection (2).
- (4) In this section and section 41B, the **appropriate court** is the court before which the person to whom the databank compulsion notice relates was sentenced for the offence, or is due to appear for sentence for the offence, in relation to which the notice has been issued.

Section 41: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 41(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(2)(a)(i): amended, on 5 December 2013, by section 9(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(2)(a)(ii): amended, on 5 December 2013, by section 9(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(2)(b): amended, on 5 December 2013, by section 9(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(2)(e)(i): amended, on 5 December 2013, by section 9(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(2)(e)(ii): amended, on 5 December 2013, by section 9(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(2)(e)(ii)(A): amended, on 5 December 2013, by section 9(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(2)(e)(ii)(B): amended, on 5 December 2013, by section 9(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 41(4): amended, on 5 December 2013, by section 9(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

41A Form and effect of request for databank compulsion notice hearing

- (1) A request for a databank compulsion notice hearing—
 - (a) must be in writing; and
 - (b) must specify the ground or grounds listed in section 41(2) that are relied on.
- (2) If a request is made for a databank compulsion notice hearing, a bodily sample must not be taken from the person to whom the databank compulsion notice relates unless a Judge at a databank compulsion notice hearing makes a Part 3 order.

Section 41A: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

41B Obligations if databank compulsion notice hearing requested

- (1) A constable must, as soon as is practicable after receiving a request for a databank compulsion notice hearing, file a notice of hearing, in the prescribed form, in the appropriate court.
- (2) The Registrar of the court in which the notice of hearing is filed must advise the following persons of the time and place for the hearing:
 - (a) the person to whom the notice relates;
 - (b) if the person to whom the notice relates is under the age of 17 years, a parent or other person having the care of that person;
 - (c) if a lay advocate has been appointed under section 326 of the Oranga Tamariki Act 1989 in respect of the person to whom the notice relates, that lay advocate;
 - (d) the constable in charge of the Police station where the constable who filed the notice of hearing is stationed.

Section 41B: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 41B(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41B(2)(c): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 41B(2)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41B(2)(d): amended, on 1 October 2008, pursuant to section 116(a)(v) of the Policing Act 2008 (2008 No 72).

41C Appearance at databank compulsion notice hearing

- (1) The following persons are entitled to appear and to adduce evidence at a databank compulsion notice hearing:
 - (a) the person to whom the databank compulsion notice relates:
 - (b) any lawyer who represents the person to whom the databank compulsion notice relates:
 - (c) the Police.
- (2) If a person to whom a databank compulsion notice relates is under the age of 17 years, the following persons, as well as the persons listed in subsection (1), are entitled to appear and to adduce evidence at the databank compulsion notice hearing:
 - (a) any person who is a parent or other person having the care of the person to whom the databank compulsion notice relates:
 - (b) any lawyer representing a person referred to in paragraph (a):
 - (c) a lay advocate of the person to whom the databank compulsion notice relates, if any has been appointed under section 326 of the Oranga Tamariki Act 1989:
 - (d) with the leave of the Judge, any other person.
- (3) The provisions of sections 21 and 22 (which relate to the appointment of a lawyer to represent a respondent who is under the age of 17 years) apply, with any necessary modifications, to a databank compulsion notice hearing if the person to whom the hearing relates is under the age of 17 years.

Section 41C: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 41C(2)(c): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Part 3 orders and other orders made at databank compulsion notice hearings

Heading: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

42 Part 3 orders and other orders made at databank compulsion notice hearings

- (1) If a Judge at a databank compulsion notice hearing is satisfied that either of the grounds specified in section 41(2)(a) or (b) have been proved, the Judge must make an order that the databank compulsion notice is of no effect.
- (2) If a Judge at a databank compulsion notice hearing is satisfied that the ground specified in section 41(2)(c) has been proved, the Judge must,—
 - (a) if he or she believes on reasonable grounds that the state of the person's health is unlikely to change, make an order that the databank compulsion notice is of no effect; or
 - (b) if he or she believes on reasonable grounds that the taking of a bodily sample by a particular method will not cause serious harm to the person's health if taken on a date other than the date specified in the databank compulsion notice,—
 - (i) make a Part 3 order; and
 - (ii) vary the notice by specifying a new date on which the person to whom a notice relates is to attend to give a bodily sample that need not be a date in accordance with the applicable date set out in section 39C(3)(b) or (4)(b); and
 - (iii) vary the notice to require the sample be taken by a particular method.
- (3) A Judge must not vary a databank compulsion notice under subsection (2)(b)(ii) and (iii) unless an independent medical practitioner approved by the Judge certifies that the taking of the sample by the method specified will not cause serious harm to the person's health on the new date specified.
- (4) If a Judge at a databank compulsion notice hearing is satisfied that the ground specified in section 41(2)(d) has been proved, the Judge must—
 - (a) make a Part 3 order; and
 - (b) vary the databank compulsion notice by specifying a new date on which the person to whom the notice relates is to attend to give a bodily sample pursuant to the databank compulsion notice, being a date later than 14 days after the date on which the notice was served and in accordance with the applicable date set out in section 39C(3)(b) or (4)(b).
- (5) If a Judge at a databank compulsion notice hearing is satisfied that the ground specified in section 41(2)(e) has been proved, the Judge must,—
 - (a) if the latest permissible date that may be specified in the databank compulsion notice as the date on which the person to whom the notice relates

is to attend to give a bodily sample had passed when the databank compulsion notice was served, make an order that the notice is of no effect; or

- (b) if the latest permissible date that may be specified in the databank compulsion notice as the date on which the person to whom the notice relates is to attend to give a bodily sample had not passed when the databank compulsion notice was served,—
 - (i) make a Part 3 order; and
 - (ii) vary the databank compulsion notice by specifying a new date on which the person to whom the notice relates is to attend to give a bodily sample pursuant to the notice, being a date in accordance with the applicable dates set out in section 39C(3) or (4).
- (6) If a Judge at a databank compulsion notice hearing is satisfied that either or both of the grounds specified in section 41(2)(f) or (g) have been proved, the Judge may make any order he or she considers appropriate.
- (7) If a Judge at a databank compulsion hearing is satisfied that none of the grounds specified in section 41(2) (including grounds other than those raised by the person requesting the hearing) has been proved, the Judge must make a Part 3 order.
- (8) This section is subject to sections 43A and 43B.

Section 42: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

43 Judge may vary, or impose conditions on, databank compulsion notice

- (1) If a Judge makes a Part 3 order, the Judge may also, if the Judge considers it appropriate, do any of the following:
 - (a) specify in the databank compulsion notice in relation to which the order is made a new place at which the person to whom the notice relates is to attend to give a bodily sample;
 - (b) specify in the databank compulsion notice in relation to which the order is made a new date on which the person to whom the notice relates is to attend to give a bodily sample, being a date in accordance with the applicable dates set out in section 39C(3) or (4);
 - (c) include any reasonable conditions the Judge thinks fit in the databank compulsion notice.
- (2) A Judge may not do anything under subsection (1) that is inconsistent with what the Judge must do under section 42.
- (3) This section is subject to section 43A.

Section 43: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

43A Change of circumstances before databank compulsion notice hearing takes place or is completed

- (1) Subsection (2) applies if,—
 - (a) in the case of a person who was not detained under a sentence of imprisonment in relation to the offence for which a databank compulsion notice was issued at the time the databank compulsion notice was served,—
 - (i) that person makes a request for a databank compulsion notice hearing on any of the grounds set out in section 41(2); and
 - (ii) before an application is made for a databank compulsion notice hearing, after an application is made but before the matter is considered by a Judge, or before consideration of the matter is complete, a date is reached that is 6 months or more since the person's conviction for the offence in relation to which the databank compulsion notice was issued was entered:
 - (b) in the case of a person who was detained under a sentence of imprisonment for the offence in relation to which a databank compulsion notice was issued at the time a databank compulsion notice was served,—
 - (i) that person makes a request for a databank compulsion notice hearing on any of the grounds set out in section 41(2); and
 - (ii) before an application is made for a databank compulsion notice hearing, after an application is made but before the matter is considered by a Judge, or before consideration of the matter is complete, the later of the 2 following dates is reached:
 - (A) the date of the person's release from detention under a sentence of imprisonment for the offence in relation to which the databank compulsion notice was issued; or
 - (B) the date that is 6 months from the date on which the conviction for the offence in relation to which the databank compulsion notice was issued was entered.
- (2) If this subsection applies,—
 - (a) a databank compulsion notice hearing must take place and be completed as if the applicable date referred to in subsection (1)(a)(ii) or (b)(ii) had not been reached; and
 - (b) a Judge—
 - (i) must make an appropriate order under section 42; and
 - (ii) may, if applicable, vary, or include any condition in, the databank compulsion notice under section 42 or section 43.
- (3) Despite anything in this Part, if subsection (2) applies, a Judge may vary the date in a databank compulsion notice on which a person to whom the notice

relates is to attend to give a bodily sample to a date that is not in accordance with the applicable date set out in section 39C(3)(b) or (4)(b).

(4) This section is subject to section 43B.

Section 43A: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 43A(1)(a): amended, on 5 December 2013, by section 10 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 43A(1)(a)(ii): amended, on 5 December 2013, by section 10 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 43A(1)(b): amended, on 5 December 2013, by section 10 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 43A(1)(b)(ii)(A): amended, on 5 December 2013, by section 10 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 43A(1)(b)(ii)(B): amended, on 5 December 2013, by section 10 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

43B Order that databank compulsion notice of no effect must be made in certain circumstances

(1) Nothing in section 42 or section 43A allows a Judge to make a Part 3 order if the Judge is satisfied that—

- (a) the date specified in a databank compulsion notice by a constable who is of or above the level of position of inspector on which the person to whom the notice relates is to attend to give a bodily sample is on or before the 14th day after the date on which the notice was served (meaning the date is not in accordance with the applicable date set out in section 39C(3)(a) or (4)(a)); and
- (b) if the date in the notice had complied with section 39C(3)(a) or (4)(a) by being a date later than the 14th day after the date on which the notice was served, then that date would not have been in accordance with the applicable date set out in section 39C(3)(b) or (4)(b) (because the date would have been after the latest permissible date specified in those sections).

(2) If the Judge is satisfied of the matters in subsection (1)(a) and (b), the Judge must make an order that a databank compulsion notice is of no effect.

Section 43B: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 43B(1)(a): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Further databank compulsion notice

Heading: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

44 Further databank compulsion notice

- (1) If a person to whom a databank compulsion notice relates has given a bodily sample pursuant to that notice, a further databank compulsion notice must not be issued in relation to that person for the same conviction without the leave of a Judge of the appropriate court on an application from a constable who is of or above the level of position of sergeant.
- (2) In this section, the **appropriate court** is the court before which the person to whom the databank compulsion notice relates was sentenced for the offence in relation to which the notice has been issued, or is due to appear for sentence for the offence in relation to which the notice has been issued.

Section 44: substituted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 44(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 44(1): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 44(2): amended, on 5 December 2013, by section 11 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

44A Certain matters relating to further databank compulsion notice

- (1) A Judge must not grant leave for a further databank compulsion notice to be issued unless he or she is satisfied that it is necessary to obtain another bodily sample from the person in relation to whom the databank compulsion notice was issued because—
 - (a) the sample taken pursuant to the notice—
 - (i) has been lost; or
 - (ii) has been destroyed (other than under section 62(1) or (2)); or
 - (b) a proper analysis of the sample taken pursuant to the notice has not been possible on account of the condition of that sample.
- (2) A Judge may refuse to grant leave to issue a further databank compulsion notice if he or she is satisfied that the taking of a further bodily sample would be vexatious or an abuse of process.
- (3) A Judge may grant leave for a further databank compulsion notice to be issued even if the applicable date set out in section 39C(3)(b) or (4)(b) before which a person may be required to attend to give a bodily sample has been reached.
- (4) If a Judge grants leave for a further databank compulsion notice to be issued in the circumstances referred to in subsection (3), the constable who is of or above the level of position of inspector issuing the notice must comply with all of the obligations relating to the issuing of a databank compulsion notice, ex-

cept for the inclusion of a date for the person to attend to give a sample that is in accordance with the applicable date set out in section 39C(3)(b) or (4)(b).

- (5) A person in relation to whom a further databank compulsion notice is issued in the circumstances referred to in subsection (3) may not request a databank compulsion hearing on the ground specified in section 41(2)(e), but may do so on any other ground specified in section 41(2).

Section 44A: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 44A(4): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

44B Judge to specify method of taking sample if further databank compulsion notice issued

- (1) If a Judge grants leave for a further databank compulsion notice to be issued, the Judge must specify the method by which a bodily sample is to be taken.
- (2) In determining the method by which a bodily sample is to be taken, the Judge must have regard to—
- (a) any view expressed by the constable who is making the application (being a constable who is of or above the level of position of sergeant) regarding which of the 3 methods should be used; and
 - (b) any view expressed by the person to whom the notice relates regarding which of the 3 methods should be used.

Section 44B: inserted, on 15 April 2004, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 44B(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 44B(2)(a): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Part 4

Procedures for taking bodily samples

Part 4 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Attendance for purpose of taking bodily sample: Compulsion order or databank compulsion notice

Heading: substituted, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Heading: amended, on 6 September 2010, by section 10 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

45AA Date on which bodily sample to be taken

- (1) A bodily sample must not be taken pursuant to a compulsion order or databank compulsion notice if the date specified in the order or notice on which the per-

son to whom the order or notice relates is to attend to give a bodily sample has passed, unless—

- (a) a warrant to arrest the person to whom the order or notice relates has been issued under section 45; or
 - (b) the date has been varied by a Judge under section 42, section 43, section 43A, or section 47 to a date later than the date originally specified in the order or notice.
- (2) If a person to whom a compulsion order or databank compulsion notice relates and a constable agree to vary the date specified in a compulsion order or databank compulsion notice on which the person is to attend to give a bodily sample, but for any reason the person does not attend to give the sample on that date, the person may attend to give the sample on—
- (a) the date specified in the order or notice, which may be the date as varied by a Judge under section 42, section 43, section 43A, or section 47; or
 - (b) any other date before the date specified in the order or notice, agreed to by the person to whom the order or notice relates and a constable under section 24A(2) or (4)(b) or section 39A(2)(c) or (3)(b)(ii).

Section 45AA: inserted, on 15 April 2004, by section 24(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 45AA(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 45AA(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

45 Judge may issue warrant for arrest and detention

- (1) To avoid doubt, in this section and section 45A, a reference to a date specified in a compulsion order or databank compulsion notice on which the person to whom the order or notice relates is to attend to give a bodily sample—
- (a) includes, if applicable, a date varied by a Judge under section 42, section 43, section 43A, or section 47; but
 - (b) does not include a date varied by agreement between the person to whom the order or notice relates and a constable under section 24A(2) or (4)(b) or section 39A(2)(c) or (3)(b)(ii).
- (2) If a compulsion order is made or a databank compulsion notice is issued, a Judge of the appropriate court may, on an application made by the applicant for the order, or any other constable who is of or above the level of position of sergeant, direct the issue of a warrant to arrest and detain the person to whom the order or notice relates, subject to section 45A(2)(b), until a bodily sample is taken.
- (3) For the purposes of subsection (2), the **appropriate court** is,—
- (a) in relation to a compulsion order, the court in which the compulsion order was made; and

- (b) in relation to a databank compulsion notice, the court before which the person to whom the databank compulsion notice relates was sentenced for the offence, or is due to appear for sentence for the offence, in relation to which the notice has been issued.
- (4) A Judge must not direct the issue of a warrant before the date specified in a compulsion order or databank compulsion notice on which the person to whom the order or notice relates is to attend to give a bodily sample, unless the Judge is satisfied by evidence given on oath—
- (a) that the person to whom the order or notice relates is unlikely to attend to give a bodily sample on the date specified in the order or notice, either—
 - (i) because the person to whom the order or notice relates has absconded; or
 - (ii) because there are reasonable grounds to believe that the person to whom the order or notice relates is about to abscond; and
 - (b) that—
 - (i) all reasonable steps have been taken to serve the person to whom the order relates with the order specifying the date on which the person is to attend to give the bodily sample; or
 - (ii) the person to whom the notice relates has been served with the notice specifying the date on which the person is to attend to give the bodily sample; and
 - (c) that, if applicable, all reasonable steps have been taken to give the person notice of the varying of the date—
 - (i) in the order or notice under section 47 if the person to whom the order or notice relates was not the applicant for the variation; or
 - (ii) in the notice under section 42, section 43, or section 43A.
- (5) A Judge must not direct the issue of a warrant on or after the date specified in a compulsion order or databank compulsion notice on which the person to whom the order or notice relates was to attend to give a bodily sample unless the Judge is satisfied by evidence given on oath—
- (a) that the person to whom the order or notice relates has failed to attend to give a bodily sample on the date specified in the order or notice; and
 - (b) that—
 - (i) all reasonable steps have been taken to serve the person to whom the order relates with the order specifying the date on which the person is to attend to give the bodily sample; or
 - (ii) the person to whom the notice relates has been served with the notice specifying the date on which the person is to attend to give the bodily sample; and

- (c) that, if applicable, all reasonable steps have been taken to give the person notice of the varying of the date—
 - (i) in the order or notice under section 47 if the person to whom the order or notice relates was not the applicant for the variation; or
 - (ii) in the notice under section 42, section 43, or section 43A.
- (6) Nothing in this section requires a Judge to direct the issue of an arrest warrant if the Judge is satisfied that the person to whom a compulsion order or databank compulsion notice relates was, or will be, unable to attend to give a bodily sample on the date specified in the compulsion order or databank compulsion notice due to reasons outside that person's control.

Section 45: substituted, on 15 April 2004, by section 24(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 45(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 45(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 45(2): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 45(2): amended, on 15 December 2005, by section 5 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Section 45(3)(b): amended, on 5 December 2013, by section 12 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

45A Form and effect of warrant for arrest and detention

- (1) Every warrant issued under section 45—
 - (a) must be in the prescribed form; and
 - (b) expires immediately after a bodily sample is taken from the person to whom the compulsion order or databank compulsion notice in relation to which the warrant is issued relates.
- (2) A warrant issued under section 45 authorises—
 - (a) the arrest of the person to whom the compulsion order or databank compulsion notice relates; and
 - (b) the detention of that person for as long as is reasonably necessary to take a bodily sample from that person, but in no case longer than 24 hours.
- (3) A bodily sample taken pursuant to a warrant issued under section 45 must be taken in accordance with the compulsion order or databank compulsion notice to which the person is subject.
- (4) Despite subsection (3), a bodily sample taken pursuant to a warrant need not be taken at the place, on the date, or at the place and on the date specified in the compulsion order or databank compulsion notice.
- (5) The power to arrest and detain a person pursuant to a warrant issued under section 45 may be exercised on 1 occasion only.

Section 45A: inserted, on 15 April 2004, by section 24(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

46 Person in custody to attend to give bodily sample

- (1) This section applies to a person in respect of whom a compulsion order has been made, or a databank compulsion notice has been issued, if that person is detained—
 - (a) in the custody of the Police; or
 - (b) in the custody of the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or
 - (c) in custody in any prison; or
 - (d) in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (e) in a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- (2) A person having custody of, or responsibility for, a person to whom this section applies must cause that person to attend at the place where, and on the date on which, a bodily sample is to be taken pursuant to the compulsion order or databank compulsion notice.
- (3) To avoid doubt, a place where, or a date on which, a person is to attend to give a bodily sample pursuant to a compulsion order or databank compulsion notice may be, if applicable,—
 - (a) a place or date as varied by a Judge under section 42, section 43, section 43A, or section 47; or
 - (b) a place or date as varied by agreement between the person to whom the order or notice relates and a constable under section 24A(2) or section 39A(2)(c).
- (4) An agreement reached, under section 24A(2) or section 39A(2)(c), between a person to whom this section applies and a constable, to vary the place where, the date on which, or the place where and the date on which, a bodily sample is to be taken under a compulsion order or databank compulsion notice is of no effect unless it has been approved by the person having custody of, or responsibility for, the person to whom this section applies.
- (5) The Commissioner must meet any of the following expenses incurred by any person:
 - (a) the expense of bringing a person to whom this section applies to the place where the bodily sample is to be taken; and
 - (b) the expense of returning that person to the place where he or she is required to be detained.
- (6) The expenses referred to in subsection (5) include, but are not limited to, expenses relating to the maintenance and custody of a person to whom this sec-

tion applies while he or she is absent from the place where he or she would otherwise be detained.

Section 46: substituted, on 15 April 2004, by section 24(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 46(1)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 46(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 46(1)(d): amended, on 1 September 2004, by section 50(4) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 46(1)(e): added, on 1 September 2004, by section 50(4) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 46(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 46(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

46A Person detained or required to remain at residence to attend to give bodily sample

- (1) An agreement reached, under section 24A(4)(b) or section 39A(3)(b)(ii), between a person serving a sentence of imprisonment by way of home detention or a sentence of home detention imposed under section 80A of the Sentencing Act 2002, or on parole subject to residential restrictions imposed under section 15 of the Parole Act 2002, and a constable to vary the date on which a bodily sample is to be taken, pursuant to a compulsion order or databank compulsion notice, is of no effect unless it has been approved by the probation officer supervising that person.
- (2) Subsection (3) applies if—
 - (a) a condition is included in a suspect compulsion order or juvenile compulsion order under section 24A(5); or
 - (b) a statement is included in a databank compulsion notice under section 39A(4).
- (3) If this subsection applies,—
 - (a) the Police must, as soon as practicable, give the Department of Corrections notice of the need for the person to leave the place where he or she is detained or required to remain for the purposes of having a bodily sample taken pursuant to a compulsion order or databank compulsion notice; and
 - (b) section 46(5) and (6) applies with all necessary modifications.

Section 46A: substituted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 46A(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

47 Variation by Judge on application of place and date for taking sample

- (1) If a compulsion order is made, or a databank compulsion notice is issued, a constable who is of or above the level of position of sergeant, or a person to whom the order or notice relates, may at any time apply to a Judge of the appropriate court to—
 - (a) vary the date specified in the order or notice on which the person to whom the order or notice relates is to attend to give a bodily sample; or
 - (b) vary the place specified in the order or notice where the person to whom the order or notice relates is to attend to give a bodily sample; or
 - (c) do both of the matters referred to in paragraphs (a) and (b).
- (2) For the purposes of subsection (1), the **appropriate court** is,—
 - (a) in relation to a compulsion order, the court in which the compulsion order was made; and
 - (b) in relation to a databank compulsion notice, the court before which the person to whom the databank compulsion notice relates was sentenced for the offence, or is due to appear for sentence for the offence, in relation to which the notice has been issued.
- (3) An application may be made under this section at any time, whether before or after the date specified in the compulsion order or databank compulsion notice as the date on which the person to whom the order or notice relates is to attend to give a bodily sample.
- (4) If a place, date, or place and date is varied under subsection (1), the varied place, date, or place and date must be treated for the purposes of the relevant compulsion order or databank compulsion notice, and this Act, as the place, date, or place and date specified in the order or notice.
- (5) A Judge may, if he or she considers it appropriate, on an application under this section, vary a compulsion order or databank compulsion notice in any manner he or she thinks fit, including (without limitation) variation of—
 - (a) the application of a condition included in an order under section 24A(2), (3), or (5); or
 - (b) the particulars included in a notice under section 39A(2)(c) or (4).
- (6) To avoid doubt, an application must not be made under subsection (1) to vary a date or place, or date and place, agreed to by the person to whom the compulsion order or databank compulsion notice relates and a constable under section 24A(2) or section 39A(2)(c), or to vary a date agreed to by those persons under section 24A(4)(b) or section 39A(3)(b)(ii), but that date or place, or date and place, may be varied by a further agreement between the parties.

Section 47: substituted, on 15 April 2004, by section 24(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 47(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 47(1): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 47(2)(b): amended, on 5 December 2013, by section 13 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 47(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Procedure for taking bodily samples

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

48 Method by which bodily sample may be taken: samples under Parts 2, 2A, and 3

- (1) If a bodily sample is being taken as a result of a Part 2A request, it may only be taken by way of a buccal sample.
- (2) If a bodily sample is being taken as a result of a suspect request or a databank request, or pursuant to a compulsion order or databank compulsion notice, it may, subject to subsections (3) to (5), be taken by any of the following methods:
 - (a) venous sample:
 - (b) fingerprick sample:
 - (c) buccal sample.
- (3) In the case of a bodily sample being taken as a result of a suspect request or a databank request, the person from whom the sample is to be taken must be given an opportunity to elect which of the 3 methods referred to in subsection (2) is to be used to take the sample.
- (4) In the case of a bodily sample being taken pursuant to a compulsion order or a databank compulsion notice where the Judge has not specified the method by which the sample is to be taken under section 17A, section 24A(1), section 42(2)(b)(iii), or section 44B, the person from whom the sample is to be taken must be given an opportunity to elect which of the 3 methods referred to in subsection (2) is to be used to take the sample, and, if—
 - (a) he or she agrees to give a sample in compliance with the order or notice, the sample must be taken by the method he or she has chosen; or
 - (b) he or she refuses to give a bodily sample in compliance with the order or notice, the sample, if it is taken by force under section 54(2) and, if applicable, section 54(3), must be taken by fingerprick sample.
- (5) In the case of a bodily sample being taken pursuant to a compulsion order or databank compulsion notice where the Judge has specified under section 17A, section 24A(1), section 42(2)(b)(iii), or section 44B the method by which the sample is to be taken,—
 - (a) if the person agrees to give a sample in compliance with the order or notice, the sample must be taken by the method specified by the Judge; or

- (b) if the person refuses to give a bodily sample in compliance with the order or notice, the sample, if taken by force under section 54(2) and, if applicable, section 54(3), must be taken by way of—
 - (i) buccal sample, if the Judge has specified under section 24A(1) or section 42(2)(b)(iii) a buccal sample as the method by which the sample is to be taken (because of the person’s state of health); or
 - (ii) fingerprick sample, in any other case.
- (6) A constable may indicate to a person making an election under subsection (3) or (4)(a) that the Police prefer a particular method for taking the sample be used.
- (7) If a person has been given a reasonable opportunity under subsection (3) or (4)(a) to choose the method by which the sample is to be taken and has indicated that he or she has no preference as to the method by which the sample is taken, a constable must choose which of the 3 methods is to be used to take the sample.
- (8) Section 54(2) and, if applicable, section 54(3) apply if a person refuses to allow a bodily sample to be taken after a decision has been made by a constable under subsection (7).

Section 48: substituted, on 15 April 2004, by section 25 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 48 heading: amended, on 6 September 2010, by section 11 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 48(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 48(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 48(8): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

48A Method by which bodily sample may be taken: samples under Part 2B

- (1) If a bodily sample is being taken under Part 2B, it may, subject to subsections (2) to (5), be taken by either of the following methods:
 - (a) fingerprick sample:
 - (b) buccal sample.
- (2) The person from whom the sample is to be taken must be given an opportunity to elect which of the 2 methods referred to in subsection (1) is to be used to take the sample.
- (3) A constable may indicate to a person making an election under subsection (2) that the Police prefer a particular method for taking the sample.
- (4) The sample must be taken—
 - (a) by the method in subsection (1) that the person has chosen; or

- (b) if the person has been given a reasonable opportunity to elect which of the methods in subsection (1) is to be used to take the sample and has indicated that he or she has no preference as to the method by which the sample is taken, by the method referred to in subsection (1) chosen by a constable.
- (5) Despite subsection (4), if reasonable force is required to take the sample, the sample must be taken by fingerprick sample.

Section 48A: inserted, on 6 September 2010, by section 12 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

49 Persons authorised to take blood samples

A blood sample taken from a person under this Act must be taken by a suitably qualified person.

Section 49: substituted, on 15 April 2004, by section 26 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

49A Persons authorised to take buccal samples

- (1) If a buccal sample is being taken pursuant to a compulsion order or databank compulsion notice or under Part 2B from a person of or over the age of 17 years, he or she may elect to—
 - (a) take the buccal sample himself or herself under the supervision of a constable; or
 - (b) have the buccal sample taken by a suitably qualified person.
- (2) If a buccal sample is being taken pursuant to a suspect request or a databank request from a person of or over the age of 17 years, the buccal sample must be taken by the person from whom the buccal sample is to be taken himself or herself under the supervision of a constable.
- (3) If a buccal sample is being taken under this Act from a person of or over the age of 14 years but under the age of 17 years, he or she may elect to—
 - (a) take the buccal sample himself or herself under the supervision of a constable; or
 - (b) have the buccal sample taken by a suitably qualified person; or
 - (c) in the case of a sample being taken under Part 2B, have the buccal sample taken by an independent adult under the supervision of a constable.
- (4) If a buccal sample is being taken under this Act from a child, he or she may elect—
 - (a) one of the options set out in subsection (3); or
 - (b) to have the buccal sample taken by a parent, under the supervision of a constable.

- (5) Despite subsections (1)(a), (2), and (3)(a), if a person is unable to take a buccal sample himself or herself due to disability or injury, the buccal sample must be taken by a suitably qualified person.
- (6) Despite subsection (4), a child who is unable to take a buccal sample himself or herself due to disability or injury may only elect to have the buccal sample taken by—
- (a) a parent, under the supervision of a constable; or
 - (b) a suitably qualified person.
- (7) A bodily sample must not be taken from a child if—
- (a) a buccal sample is to be taken as a result of a Part 2A request; and
 - (b) the child is unable to take the buccal sample himself or herself due to disability or injury; and
 - (c) the child does not make an election under subsection (6).

Section 49A: inserted, on 15 April 2004, by section 27 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 49A(1): amended, on 6 September 2010, by section 13(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 49A(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 49A(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 49A(3)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 49A(3)(b): amended, on 6 September 2010, by section 13(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 49A(3)(c): added, on 6 September 2010, by section 13(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 49A(4)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 49A(6)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

50 Person giving sample under Part 2, 2A, or 3 entitled to have certain other persons present

- (1) A person from whom a bodily sample is taken under Part 2, 2A, or 3 is entitled to have the following persons present during the taking of the sample:
- (a) a lawyer, or another person, of the person's choice; and
 - (b) in the case of a person under the age of 17 years, a parent or other person who has the care of that person.
- (2) The constable who is responsible for arranging the taking of a bodily sample from a person pursuant to this Act shall,—
- (a) a reasonable time before that sample is to be taken, ascertain whether or not that person wishes to exercise the right conferred on that person by

- subsection (1) and, if so, the name of the person or persons chosen by that person pursuant to that subsection; and
- (b) take all reasonable steps to ensure that each person so chosen is notified—
- (i) that the person from whom the sample is to be taken wishes him or her to be present during the taking of the sample; and
- (ii) of the date on which, and the time and place at which, the sample is to be taken.
- (3) Notwithstanding anything in paragraph (a) of subsection (1), where a bodily sample is to be taken from a person who is under the age of 17 years, the persons referred to in that paragraph may, unless the person from whom the sample is to be taken objects, be chosen, on that person's behalf, by a parent or other person who has the care of that person, and in any such case the provisions of subsection (2) shall apply with all necessary modifications.

Section 50 heading: amended, on 6 September 2010, by section 14(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 50(1): substituted, on 15 April 2004, by section 28 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 50(1): amended, on 6 September 2010, by section 14(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 50(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 50(2): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 50(3): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

50A Other person must be present when young person gives sample under Part 2B

- (1) This section and sections 50B to 50D apply to a young person from whom a bodily sample is to be taken under Part 2B.
- (2) The young person is entitled to have the following persons present during the taking of the sample:
- (a) a lawyer, or another person, of the young person's choice; and
- (b) a parent or other person who has the care of that young person.
- (3) The constable responsible for arranging the taking of the bodily sample must—
- (a) ascertain whether the young person wishes to exercise the right conferred on that person by subsection (2); and
- (b) take all reasonable steps to ensure that each person chosen is notified that the young person wishes him or her to be present during the taking of the sample.

- (4) A person referred to in subsection (2)(a) may, unless the young person objects, be chosen on the young person's behalf by a parent or other person who has the care of that young person, and in that case subsection (3) applies with all necessary modifications.
- (5) One of the following persons must be present during the taking of a bodily sample from a young person under Part 2B:
 - (a) a person chosen under this section by the young person or by a parent or other person who has the care of that young person:
 - (b) a person chosen under section 50B(5) by the young person or a parent or other person who has the care of that young person:
 - (c) a person chosen under section 50B(5) by a constable:
 - (d) a person, who is not a Police employee within the meaning of section 4 of the Policing Act 2008, chosen by the constable if the young person fails or refuses to make a choice under subsection (2).

Section 50A: inserted, on 6 September 2010, by section 15 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

50B Further provision if other person chosen to be present not present when choice made

- (1) This section applies if—
 - (a) a young person chooses under section 50A to have a person or persons described in section 50A(2) present, or a parent or other person who has the care of that young person chooses under section 50A(4) to have a person described in section 50A(2)(a) present; and
 - (b) any person chosen is not present when the choice is made.
- (2) The constable may, by notice in writing to the young person or a parent or other person who has the care of that young person, require the attendance of the young person on a date and at a time and place specified in the notice to give the bodily sample.
- (3) If the constable issues a notice under subsection (2), the constable must take all reasonable steps to ensure that each person chosen as described in subsection (1)(a) is notified—
 - (a) that the young person wishes him or her to be present during the taking of the sample; and
 - (b) of the date on which, and the time and place at which, the sample is to be taken.
- (4) Subsection (5) applies if a constable believes, on reasonable grounds, that any person chosen as described in subsection (1)(a) cannot with reasonable diligence be located or will not be available within a period of time that is reasonable in the circumstances.

- (5) The constable may refuse to allow the young person to have the person described in subsection (1)(a) present and—
- (a) may give the young person or a parent or other person who has the care of that young person the opportunity to—
 - (i) choose another person described in section 50A(2) to be present; or
 - (ii) elect that the constable choose a person who is not a Police employee within the meaning of section 4 of the Policing Act 2008 to be present; or
 - (b) if the young person or parent or other person fails or refuses to make a choice or an election under paragraph (a), may choose a person who is not a Police employee within the meaning of section 4 of the Policing Act 2008 to be present.
- (6) If a person chosen under subsection (5) is not present when the choice is made, the constable—
- (a) may, by notice in writing to the young person or a parent or other person who has the care of that young person, require the attendance of the young person on a date and at a time and place specified in the notice to give the bodily sample; and
 - (b) if the constable issues a notice under paragraph (a), must take all reasonable steps to ensure that the person chosen is notified,—
 - (i) if applicable, that the young person wishes him or her to be present during the taking of the sample; and
 - (ii) of the date on which, and the time and place at which, the sample is to be taken.
- (7) However, if a constable believes, on reasonable grounds, that any person chosen as described in subsection (5)(a)(i) cannot with reasonable diligence be located or will not be available within a period of time that is reasonable in the circumstances, the constable may choose a person who is not a Police employee within the meaning of section 4 of the Policing Act 2008 to be present.

Section 50B: inserted, on 6 September 2010, by section 15 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

50C Judge may issue warrant for arrest and detention if young person fails to attend in accordance with notice under section 50B

- (1) A Judge of the appropriate court may, on application by a person described in subsection (2), issue a warrant to arrest and detain a young person until a bodily sample is taken if the Judge is satisfied that—
- (a) a notice was given to a young person under section 50B(2) or (6); and

- (b) the young person failed to attend as specified in the notice to give a bodily sample.
- (2) A person referred to in subsection (1) is—
 - (a) the constable who gave the notice; or
 - (b) any other constable.
- (3) Nothing in this section requires a Judge to direct the issue of an arrest warrant if the Judge is satisfied that the person to whom the notice relates was unable to attend to give a bodily sample on the date specified in the notice due to reasons outside that person's control.
- (4) In subsection (1), **appropriate court** means—
 - (a) if the young person has not yet been charged for the triggering offence, the court in which the charge would be filed; or
 - (b) if the young person has been charged for the triggering offence, the court in which the charge was filed.

Section 50C: inserted, on 6 September 2010, by section 15 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 50C(4)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 50C(4)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

50D Form and effect of warrant issued under section 50C

- (1) A warrant issued under section 50C—
 - (a) must be in the prescribed form; and
 - (b) expires immediately after a bodily sample is taken from the person to whom the notice under section 50B (the **notice**) relates.
- (2) A warrant under section 50C authorises—
 - (a) the arrest of the person to whom the notice relates; and
 - (b) the detention of that person for as long as is reasonably necessary to take a bodily sample from that person, but in no case longer than 24 hours.
- (3) If a bodily sample is taken under a warrant issued under section 50C, this Act applies as if the sample is being taken under Part 2B in respect of the triggering offence.
- (4) The power to arrest and detain a person under a warrant issued under section 50C may be exercised on 1 occasion only.

Section 50D: inserted, on 6 September 2010, by section 15 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

51 Suitably qualified persons and certain other persons, not compelled to take sample or be present

Nothing in this Act—

- (a) compels any suitably qualified person to take a bodily sample from any person; or
- (b) compels any lawyer or person chosen under section 50(1)(a) or (3) or 50A(2)(a) or (4) or 50B(5), or any person referred to in section 50(1)(b) or 50A(2)(b), to be present during the taking of a bodily sample; or
- (c) compels any parent to take a buccal sample from his or her child under section 49A(3)(c), (4)(b), or (6)(a).

Section 51 heading: amended, on 15 April 2004, by section 29(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 51(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 51(a): amended, on 15 April 2004, by section 29(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 51(b): substituted, on 15 April 2004, by section 29(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 51(b): amended, on 6 September 2010, by section 16(1)(a) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 51(b): amended, on 6 September 2010, by section 16(1)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 51(c): added, on 15 April 2004, by section 29(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 51(c): amended, on 6 September 2010, by section 16(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

52 Who may be present when bodily sample taken

- (1) No person shall be present during the taking of a bodily sample from a person pursuant to this Act except—
 - (a) a constable, who, where practicable, shall be of the same sex as the person;
 - (b) the suitably qualified person who is to take the sample or the constable who will supervise the taking of the sample or, if section 49A(4)(b) or (6)(a) applies, the parent taking a buccal sample and the constable who will supervise the taking of the buccal sample;
 - (c) any person who is chosen, pursuant to subsection (1) or subsection (3) of section 50 or section 50A(2) or (4) or 50B(5), by or on behalf of the person from whom the sample is to be taken;
 - (d) any person referred to in section 50(1)(b) or 50A(2)(b), if the person from whom the sample is to be taken wishes the person to be present;
 - (da) in the case of a suspect under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself, an independent adult, who may be one of the persons referred to in paragraph (c) or paragraph (d):

- (e) where the person from whom the sample is to be taken is in custody, any person who is for the time being guarding or escorting that person:
- (f) any person chosen by a constable under section 50B(5):
- (g) any other person who is entitled by or under this Act to be present.

(2) *[Repealed]*

Section 52 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 52(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 52(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 52(1)(b): substituted, on 15 April 2004, by section 30(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 52(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 52(1)(c): amended, on 6 September 2010, by section 17(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 52(1)(d): amended, on 6 September 2010, by section 17(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 52(1)(da): inserted, on 15 April 2004, by section 30(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 52(1)(e): amended, on 15 April 2004, by section 30(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 52(1)(f): added, on 6 September 2010, by section 17(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 52(1)(g): added, on 6 September 2010, by section 17(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 52(2): repealed, on 15 April 2004, by section 30(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

52A Who must be present when suspect under age of 17 years takes own buccal sample for suspect request or Part 2A request

A suspect who is under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself must not take the buccal sample unless—

- (a) an independent adult is present when the buccal sample is taken; and
- (b) the suspect has confirmed, in the presence of that independent adult, before taking the buccal sample, that he or she has elected to take a buccal sample himself or herself.

Section 52A: inserted, on 15 April 2004, by section 31 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

53 Reasonable privacy to be afforded

Subject to section 52, a bodily sample taken from a person pursuant to this Act shall be taken in circumstances affording reasonable privacy to that person.

Section 53: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

54 Procedure for taking bodily sample pursuant to compulsion order or databank compulsion notice

- (1) If a bodily sample is to be taken pursuant to a compulsion order or databank compulsion notice, a constable must do the following:
 - (a) unless the method by which the sample is to be taken has been specified by a Judge under section 17A, section 24A(1), section 42(2)(b)(iii), or section 44B, first ascertain from the person from whom the sample is to be taken whether he or she wishes the sample to be taken by way of venous sample, fingerprick sample, or buccal sample:
 - (b) if the person is not a person in relation to whom a Judge has specified the method by which the sample is to be taken, inform the person that if he or she refuses to give a bodily sample, that a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample:
 - (c) if the person is a person in relation to whom a Judge has specified the method by which the sample is to be taken under section 17A or section 44B, or is a person in relation to whom a Judge has specified under section 24A(1) or section 42(2)(b)(iii) that the sample is to be taken by way of a blood sample, inform the person that if he or she refuses to give a bodily sample, that, despite the Judge having specified the method by which the sample is to be taken, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample:
 - (d) if he or she is a person in relation to whom a Judge has specified under section 24A(1) or section 42(2)(b)(iii) that because of the state of the person's health, the bodily sample must be taken by way of a buccal sample, inform the person that if he or she refuses to give a buccal sample, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a buccal sample.
- (2) If a person refuses to give a bodily sample pursuant to a compulsion order or a databank compulsion notice, a constable may—
 - (a) use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample; or
 - (b) if a Judge has specified under section 24A(1) or section 42(2)(b)(iii) that, because of the state of the person's health, the bodily sample must

be taken by way of buccal sample, use or cause to be used reasonable force to assist a suitably qualified person to take a buccal sample.

- (3) If a person who refuses to give a bodily sample is detained in a prison, a prison officer may, on a request made by a constable, use or cause to be used reasonable force to aid a constable to assist a suitably qualified person to take a fingerprick sample or, if subsection (2)(b) applies, a buccal sample, from that person.
- (4) If a constable exercises the power conferred by subsection (2), that constable must, not later than 3 days after exercising that power, furnish to the Commissioner a written report of the exercise of that power.

Section 54: substituted, on 15 April 2004, by section 32 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 54(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 54(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 54(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 54(1)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 54(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 54(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 54(3): amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).

Section 54(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

54A Procedure for taking bodily sample under Part 2B

- (1) If a constable proposes to require a person to give a bodily sample under Part 2B, the constable must—
- (a) ascertain from the person whether he or she wishes the sample to be taken by way of fingerprick sample or buccal sample:
 - (b) inform the person that if he or she refuses to give a bodily sample a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample.
- (2) If a person refuses to give a bodily sample when required to do so under Part 2B, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample.

Section 54A: inserted, on 6 September 2010, by section 18 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

55 How venous sample to be dealt with

- (1) Subject to any regulations made under this Act, on the taking of a venous sample pursuant to this Act, the person taking the sample shall ask the person from whom the sample is taken whether or not he or she wishes to have part of the sample for the purposes of having it analysed on his or her own behalf.
- (2) If the person responds in the affirmative to the question put to him or her in accordance with subsection (1),—
 - (a) the sample shall be divided into 2 parts; and
 - (b) each part shall be placed in a separate container, which shall then be sealed; and
 - (c) one part of the venous sample must be delivered—
 - (i) immediately to the person from whom it was taken; or
 - (ii) if the person from whom the venous sample is taken is in custody (other than pursuant to a warrant issued under section 45),—
 - (A) as soon as is practicable to any person nominated by that person for the purpose if the nominated person is not present when the venous sample is taken; or
 - (B) immediately to any person nominated for the purpose if the nominated person is present when the venous sample is taken.
- (3) If the person responds in the negative, or fails or refuses to respond, to the question put to him or her in accordance with subsection (1), all or part of the sample shall be placed in a container, which shall then be sealed.
- (4) Any anti-coagulant substance may be added to any venous sample by placing it in the container, whether before or after the sample is taken and placed in the container.

Section 55(2)(c): substituted, on 15 April 2004, by section 33 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

56 How fingerprint sample to be dealt with

Subject to any regulations made under this Act, on the taking of a fingerprint sample pursuant to this Act, the person taking the sample shall—

- (a) place the sample in a container, which shall be sealed as soon as practicable after the sample has dried; and
- (b) ask the person from whom the sample is taken whether or not he or she wishes to have a second fingerprint sample taken for the purposes of having the sample analysed on his or her own behalf; and
- (c) if the person responds in the affirmative, take a second fingerprint sample from the person, but only with that person's consent; and
- (d) deliver any second fingerprint sample—

- (i) immediately to that person; or
- (ii) if the person from whom the fingerprick sample is taken is in custody (other than pursuant to a warrant issued under section 45),—
 - (A) as soon as is practicable to any person nominated by that person for the purpose if the nominated person is not present when the fingerprick sample is taken; or
 - (B) immediately to any person nominated for the purpose if the nominated person is present when the fingerprick sample is taken.

Section 56(d): substituted, on 15 April 2004, by section 34 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

56A How buccal sample to be dealt with

- (1) This section applies to the following persons:
 - (a) any constable supervising the taking of a buccal sample; and
 - (b) any suitably qualified person taking a buccal sample.
- (2) Any person to whom this section applies must, after the taking of a buccal sample,—
 - (a) as soon as is practicable,—
 - (i) seal the buccal sample in a container once it has dried; or
 - (ii) place the buccal sample in a container in a way that allows it to dry; and
 - (b) ask the person from whom the buccal sample was taken whether or not he or she wishes to have a second buccal sample taken for the purposes of having the buccal sample analysed on his or her own behalf; and
 - (c) if the person responds in the affirmative,—
 - (i) in the case of a constable supervising the taking of the buccal sample, provide the person from whom the second buccal sample is to be taken with the means to take a second buccal sample himself or herself (or in the case of a buccal sample being taken from a child, if applicable, provide a parent with the means to take a second buccal sample from the child); or
 - (ii) in the case of a suitably qualified person, with the person's consent take a second buccal sample or, if the person so requests, provide the person from whom the second buccal sample is to be taken with the means to take a second buccal sample himself or herself (or in the case of a buccal sample being taken from a child, if applicable, provide a parent with the means to take a second buccal sample from the child); and
 - (d) deliver any second buccal sample—

- (i) immediately to that person; or
- (ii) if the person from whom the buccal sample was taken is in custody (other than pursuant to a warrant issued under section 45),—
 - (A) as soon as is practicable to any person nominated by that person for the purpose if the nominated person is not present when the buccal sample is taken; or
 - (B) immediately to any person nominated for the purpose if the nominated person is present when the buccal sample is taken.

Section 56A: inserted, on 15 April 2004, by section 35 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 56A(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 56A(2)(c)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Analysis of bodily samples and other material

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

57 Analysis of material found at scene, etc

- (1) If—
 - (a) material reasonably believed to be from, or genetically traceable to, the body of a person who committed the offence has been found or is available—
 - (i) at the scene of the offence; or
 - (ii) on the victim of the offence; or
 - (iii) from within the body or from any thing coming from within the body of the victim of the offence that is reasonably believed to be associated with, or having resulted from, the commission of the offence; or
 - (iv) on any thing reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (v) on any person or thing reasonably believed to have been associated with the commission of the offence; and
 - (b) a bodily sample is taken pursuant to Part 2 from any person in respect of that offence; and
 - (c) the person from whom the bodily sample is taken is charged with that offence, or a related offence,—

then, if practicable, a part of that material sufficient for analysis shall, at the request of the person so charged, be made available to him or her or to any other person nominated by him or her.

- (2) Subsection (1) applies with all necessary modifications to a buccal sample taken as a result of a Part 2A request if an application is made for a declaration that the suspect from whom the buccal sample is taken is in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989.

Section 57(1)(a): substituted, on 15 April 2004, by section 36(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 57(1)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 57(1)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 57(2): added, on 15 April 2004, by section 36(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 57(2): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

58 Analysis of bodily sample

If any bodily sample taken pursuant to this Act is analysed on behalf of any constable, that sample shall be analysed in accordance with the prescribed procedure (if any).

Section 58 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 58: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 58: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

59 Records of analysis to be made available

If any bodily sample taken pursuant to this Act is analysed on behalf of any constable, a copy of—

- (a) any record of that analysis; and
- (b) any record of any comparison made between that analysis and any analysis of any material of the kind referred to in section 57—

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

Section 59: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 59: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Disposal of bodily samples

Heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

60 Disposal of bodily samples and identifying information obtained under Part 2

- (1) The Commissioner shall ensure that—
- (a) every bodily sample taken pursuant to Part 2; and
 - (b) every record of any analysis of any such bodily sample carried out on behalf of any constable; and
 - (c) every record, to the extent that it contains—
 - (i) information about the sample; and
 - (ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,—is destroyed,—
 - (d) subject to section 61, as soon as practicable after the expiry of the period of 24 months beginning on the date on which the sample is taken, if the person is not charged with the offence in relation to which the sample was taken, or a related offence, before the expiry of that period; or
 - (e) if the person is charged with such an offence before the expiry of that period, as soon as practicable after—
 - (i) the charge is withdrawn; or
 - (ii) the person is acquitted of the offence,—whichever occurs first; or
 - (f) if the person is convicted of such an offence, and the offence is not an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, as soon as practicable after the expiry of the appeal period applicable to the conviction.
- (2) Subsection (2A) applies if—
- (a) a bodily sample is taken under Part 2 from a person; and
 - (b) the person is convicted of the offence in respect of which the sample is taken, or of a related offence; and
 - (c) the offence of which the person is convicted is an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule.
- (2A) The Commissioner must ensure that the sample is retained only for as long as necessary to enable a DNA profile to be obtained from the sample, and is then destroyed.

- (3) Nothing in this section requires the destruction of any DNA profile that may lawfully be retained in a DNA profile databank.
- (4) Nothing in subsection (1)(f) applies where the conviction for the offence is quashed on appeal and a new trial is ordered.

Section 60 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 60(1)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 60(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 60(1)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 60(1)(d): amended, on 6 September 2010, by section 19 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 60(1)(f): amended, on 5 December 2011, by section 49(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 60(2): substituted, on 5 December 2011, by section 49(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 60(2A): inserted, on 5 December 2011, by section 49(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

60A Disposal of bodily samples and identifying information obtained under Part 2B

- (1) This section applies to—
- (a) a bodily sample taken under Part 2B; and
 - (b) every record of any analysis of that bodily sample carried out on behalf of any constable; and
 - (c) every record, to the extent that it contains—
 - (i) information about the sample; and
 - (ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken.
- (2) The Commissioner must ensure that the bodily sample referred to in subsection (1)(a) is destroyed as soon as practicable after a DNA profile is obtained from the sample.
- (3) The Commissioner must ensure that any record referred to in subsection (1)(b) and (c) is destroyed,—
- (a) subject to section 61, as soon as practicable after the expiry of the period of 2 months beginning on the date on which the sample is taken, if the person is not charged with the triggering offence, or a related offence, before the expiry of that period; or
 - (b) if the person is charged with such an offence before the expiry of that period, as soon as practicable after the first of the following to occur:

- (i) the charge is withdrawn; or
 - (ii) the person is acquitted of the offence.
- (4) Nothing in this section requires the destruction of a DNA profile that may lawfully be retained in a DNA profile databank.
- (5) In this section, **related offence** means—
 - (a) a related imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, if the bodily sample was taken under section 24J; or
 - (b) a related relevant offence, if the bodily sample was taken under section 24K.

Section 60A: inserted, on 6 September 2010, by section 20 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 60A(3)(a): amended, on 5 December 2013, by section 14(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 60A(5): inserted, on 5 December 2013, by section 14(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

61 Extension of period for which sample may be retained

- (1) On application in accordance with this section, a District Court Judge may,—
 - (a) in respect of a bodily sample taken under Part 2 and related records as described in section 60(1)(b) and (c), extend the period specified in section 60(1)(d); or
 - (b) in respect of records as described in section 60A(1)(b) and (c), extend the period specified in section 60A(3)(a).
- (1A) In this section, the period in section 60(1)(d) or, as the case may be, section 60A(3)(a) is referred to as the **relevant period**.
- (2) An application under subsection (1)—
 - (a) may be made only by a constable who is of or above the level of position of inspector; and
 - (b) may be made at any time before the relevant period (or any current extension of the relevant period granted pursuant to this section) has expired; and
 - (c) shall be made *ex parte*.
- (3) An extension or, as the case requires, a further extension of the relevant period may be granted under this section only if the District Court Judge is satisfied—
 - (a) that the person from whom the bodily sample was taken has not been charged with the triggering offence, or a related offence; and
 - (b) either of the circumstances mentioned in subsection (3A) exists.
- (3A) The circumstances referred to in subsection (3) are—

- (a) that there is still good cause to suspect that the person committed an offence referred to in subsection (3)(a) and—
 - (i) there is a good reason for the person not having been charged; and
 - (ii) it is important to the investigation of the offence that the bodily sample, and any records that would otherwise be required to be destroyed, be retained; or
 - (b) that—
 - (i) there is not, or no longer, good cause to suspect that the person committed an offence referred to in subsection (3)(a); but
 - (ii) it is important to the investigation of the offence, or to criminal proceedings in relation to that offence, that the bodily sample, and any records that would otherwise be required to be destroyed, be retained.
- (4) An extension or, as the case requires, a further extension of the relevant period may be granted under this section—
- (a) for a period of not more than 6 months; or
 - (b) where the relevant period has previously been extended for periods that amount, in the aggregate, to 1 year or more, for a period of not more than 12 months—
- commencing on the day after the day on which the relevant period (or, as the case requires, any current extension of the relevant period granted under this section) expires.
- (5) Where an application for the extension or, as the case requires, the further extension of the relevant period is duly made before the expiry of that period (or, as the case requires, of any current extension of that period granted under this section), then, until the application is determined, the sample (in the case of a sample taken under Part 2) and any records to which the application relates may be retained notwithstanding the expiration of that period or, as the case requires, any extension of that period.
- (6) In this section, **related offence** means—
- (a) a related imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule, if the bodily sample was taken under section 24J; or
 - (b) a related relevant offence, if the bodily sample was taken under section 24K.

Section 61(1): substituted, on 6 September 2010, by section 21(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(1): amended, on 5 December 2011, by section 50(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(1A): inserted, on 6 September 2010, by section 21(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(2)(a): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 61(3): substituted, on 6 September 2010, by section 21(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(3): amended, on 5 December 2011, by section 50(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(3)(a): amended, on 5 December 2013, by section 15(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 61(3A): inserted, on 6 September 2010, by section 21(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(5): amended, on 6 September 2010, by section 21(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 61(6): inserted, on 5 December 2013, by section 15(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

61A Disposal of buccal samples and identifying information obtained under Part 2A

- (1) The Commissioner must ensure that a buccal sample taken from a suspect as a result of a Part 2A request, and the information referred to in subsection (2), is destroyed,—
 - (a) in a case where the results of analysis of the buccal sample do not tend to confirm the suspect's involvement in the offence in relation to which the buccal sample was taken, as soon as practicable after the Police receive those results; or
 - (b) in a case where the results of analysis of the buccal sample tend to confirm the suspect's involvement in the offence in relation to which the buccal sample was taken but an application is not made for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989, not later than 60 days after the Police receive the results of analysis of the buccal sample; or
 - (c) in the case where the results of analysis of the buccal sample tend to confirm the suspect's involvement in the offence in relation to which the buccal sample was taken and an application has been made for a declaration that the suspect is in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989, as soon as practicable after a decision is made by the Family Court in relation to that application (whether or not a declaration is made).
- (2) The information is—
 - (a) every record of any analysis of the buccal sample carried out on behalf of any constable; and
 - (b) every record to the extent that it contains—
 - (i) information about the buccal sample; and

- (ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the buccal sample was taken.

Section 61A: inserted, on 15 April 2004, by section 37 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 61A(1)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 61A(1)(c): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 61A(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

62 Disposal of bodily samples and identifying information obtained under Part 3

- (1) Subject to subsections (3) and (4), the Commissioner shall ensure that every bodily sample taken, pursuant to Part 3, not later than 3 months before the specified date is destroyed not later than the close of the specified date.
- (2) Subject to subsections (3) and (4), the Commissioner shall ensure that every bodily sample taken, pursuant to Part 3, on or after the specified date, or at any time within the period of 3 months before the specified date, is retained only for as long as is necessary to enable a DNA profile to be obtained from the sample, and is then destroyed.
- (3) Nothing in subsection (1) or subsection (2) authorises the retention of any bodily sample that is required, by subsection (4) or by section 60, to be destroyed.
- (4) Where—
 - (a) a bodily sample is taken pursuant to a databank compulsion notice issued in reliance on a person's conviction of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule; and
 - (b) that conviction is subsequently quashed,—

the Commissioner shall ensure that—

 - (c) that bodily sample; and
 - (d) every record of any analysis of that bodily sample carried out on behalf of any constable; and
 - (e) every record, to the extent that it contains—
 - (i) information about that sample; and
 - (ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,—

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

Section 62 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(2): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(3): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(4)(a): amended, on 5 December 2013, by section 16 of the Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112).

Section 62(4)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(4)(a): amended, on 15 April 2004, by section 38 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(4)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 62(4)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 62(4)(d): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

63 Material extracted from samples to be destroyed

Where any provision of section 60, 60A, 61A, or 62 requires the destruction of any bodily sample, any material extracted from that bodily sample shall also be destroyed.

Section 63: amended, on 6 September 2010, by section 22 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 63: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 63: amended, on 15 April 2004, by section 39 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Part 5

Miscellaneous provisions

Procedural and evidential provisions

64 Translation of notices

Where—

- (a) a notice in the prescribed form is required by section 6(2)(a), 8(2)(a), 24E(a), 24N, 30(2)(a), or 33(b) to be given to any person; and
- (b) the first or preferred language of that person is other than English,—
then—
- (c) it shall be sufficient compliance with that requirement if the notice given to that person is an accurate translation of the prescribed form in the first or preferred language of that person; and

- (d) it shall be sufficient compliance with the requirements of section 9(2) or, as the case requires, section 24G(2) or section 34(2) if that person's consent to the taking of a bodily sample is signified on the notice so given to that person.

Section 64(a): amended, on 6 September 2010, by section 23 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 64(a): amended, on 15 April 2004, by section 40(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 64(d): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 64(d): amended, on 15 April 2004, by section 40(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

65 No right of appeal

Subject to section 47, every decision and every order of a High Court Judge or a District Court Judge or a Youth Court Judge made under this Act shall be final.

66 Court may dispense with service

Where any person cannot be served with notice of an application made under any provision of this Act, a Judge of the court to which the application is made may, on such terms and conditions as the Judge thinks fit, dispense with service on that person.

67 Application of Legal Services Act 2000

- (1) For the purposes of the Legal Services Act 2000, all proceedings under this Act are civil proceedings.
- (2) *[Repealed]*
- (3) *[Repealed]*

Section 67: substituted, on 1 February 2001, by section 128 of the Legal Services Act 2000 (2000 No 42).

Section 67(2): repealed, on 15 April 2004, by section 41 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 67(3): repealed, on 1 July 2011, by section 144 of the Legal Services Act 2011 (2011 No 4).

68 Standard of proof

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

69 Non-attendance of persons not to affect admissibility of evidence

- (1) No evidence obtained as a direct or indirect result of a bodily sample taken from a person pursuant to this Act shall be inadmissible in any proceedings merely because any person chosen pursuant to subsection (1) or subsection (3) of section 50 or section 50A(2)(a) or (4) or 50B(5) is not present during the

taking of that sample, if all reasonable steps have been taken to ensure that the person so chosen is notified—

- (a) that the person from whom the sample is to be taken wishes him or her to be present during the taking of the sample; and
 - (b) of the date on which, and the time and place at which, the sample is to be taken.
- (2) This section is subject to section 50A(5).

Section 69(1): amended, on 6 September 2010, by section 24(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 69(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 69(2): added, on 6 September 2010, by section 24(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

70 Inference may be drawn from refusal to allow sample to be taken

(1) Where—

- (a) a suspect compulsion order or a juvenile compulsion order is made in respect of any person in relation to any offence; and
- (b) no bodily sample is taken from that person by reason of that person's refusal to allow a bodily sample to be taken from him or her in accordance with the order,—

then, in any criminal proceedings against that person for that offence or a related offence,—

- (c) evidence may be given as to the refusal of that person to allow the taking of that bodily sample, unless the prejudicial effect of the admission of the evidence would outweigh its probative value; and
 - (d) the court or jury may draw such inferences (if any) from the fact of refusal as appear to the court or, as the case may be, the jury to be proper in the circumstances, taking into account any evidence given by or on behalf of the person who refused to consent to the taking of the bodily sample.
- (2) In any proceedings in which the jury might draw an inference pursuant to subsection (1)(d), the Judge or, as the case may be, the District Court Judge may tell the jury that there may be good reasons for the person's refusal to allow the taking of a bodily sample.

Compare: 1980 No 94 s 57; 1991 No 120 s 2(4)

Section 70(1)(b): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 70(1)(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 70(1)(d): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 70(2): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

71 Information stored on DNA profile databank or obtained under Part 2B not admissible in criminal proceedings

- (1) Subject to subsections (2) to (4), no DNA profile that is—
- (a) derived from any bodily sample taken pursuant to this Act from any person; and
 - (b) stored on a DNA profile databank—
- shall be admissible against that person in any criminal proceedings.
- (1A) Subject to subsection (4), no DNA profile that is derived from a bodily sample taken under Part 2B is admissible against any person in any criminal proceedings.
- (2) Where a bodily sample is taken pursuant to Part 2, nothing in subsection (1) applies in respect of any proceedings for the offence in respect of which the sample was taken or for any related offence.
- (3) Nothing in subsection (1) applies in respect of any proceedings on any application for a compulsion order.
- (4) Nothing in subsection (1) or (1A) affects the admissibility of any evidence (other than a DNA profile) relating to the use of any DNA profile in the course of any criminal investigation, if that evidence would otherwise be admissible.

Section 71 heading: amended, on 6 September 2010, by section 25(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 71(1)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 71(1A): inserted, on 6 September 2010, by section 25(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 71(2): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 71(4): amended, on 6 September 2010, by section 25(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

71A Judge may consent to bodily sample taken under Part 2B being retained and used for evidential purposes

- (1) A District Court Judge or Youth Court Judge may, on application made in accordance with this section, consent to a bodily sample taken from a person under Part 2B being retained and used by the Police as an evidential sample.
- (2) An application for consent under subsection (1)—
- (a) must be made by a constable; and
 - (b) must be made before the sample concerned is analysed by or on behalf of the Police; and
 - (c) must be in writing and contain—

- (i) sufficient information to fairly inform the Judge of the nature of the bodily sample, the statutory authority for taking it, and the date on which it was taken; and
 - (ii) a statement that satisfies the Judge that the sample has not been analysed; and
 - (iii) a statement that the constable believes the sample taken from the person would tend to confirm or disprove the person's involvement in the commission of the offence and that gives the reasons for that belief; and
- (d) may be made without notice.
- (3) If the form of an application or consent under this section is not prescribed, the form must be acceptable to the court.

Section 71A: inserted, on 6 September 2010, by section 26 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Miscellaneous provisions

72 Other powers and abilities to take specimens from person's body not affected

Nothing in this Act—

- (a) limits or affects any other enactment relating to the taking of a bodily sample, or any other specimen from a person's body; or
- (b) limits section 32 of the Policing Act 2008 (which relates to the taking of fingerprints and other particulars from a person in custody); or
- (c) shall be taken to limit or affect the circumstances in which any specimen from a person's body (other than a bodily sample), or any other particulars of a person (including (without limitation) fingerprints and dental impressions) may be taken from any person with that person's consent.

Section 72 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 72(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 72(b): amended, on 1 October 2008, pursuant to section 130(4) of the Policing Act 2008 (2008 No 72).

Section 72(c): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

73 Consent to taking of bodily sample may not be given on person's behalf

Notwithstanding any other enactment or rule of law, no person shall be capable of consenting, on behalf of another person, to the taking of a bodily sample from that other person in response to a suspect request, Part 2A request, or a databank request.

Section 73 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 73: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 73: amended, on 15 April 2004, by section 42 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

74 Payment of lawyer appointed to represent suspect

- (1) Where a lawyer is appointed pursuant to section 21 or section 41C(3),—
 - (a) the fees and expenses of that lawyer shall, in accordance with any regulations made under this Act, be paid by the Crown;
 - (b) the bill of costs rendered by that lawyer shall be given to a Registrar of the court that so appointed that lawyer, and the Registrar may tax the bill of costs.
- (2) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the bill may, within 14 days after the date of the decision, apply to a Judge of the court that so appointed that lawyer to review the decision; and the Judge may make such order varying or confirming the decision as the Judge considers fair and reasonable.
- (3) Notwithstanding subsection (1), a Judge may, if he or she thinks proper, order any party to the proceedings to refund to the Crown such amount as the Judge specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall be recoverable accordingly in any court of competent jurisdiction.

Compare: 1989 No 24 s 325

Section 74(1): amended, on 15 April 2004, by section 43 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

75 Fees and expenses of lay advocate

Where, pursuant to section 18(3)(b)(vi) or section 41C(2)(c), any person appears at the hearing of an application for a juvenile compulsion order or at a databank compulsion notice hearing for a person under the age of 17 years,—

- (a) the fees and expenses of that person in connection with that appearance shall be deemed, for the purposes of section 328A of the Oranga Tamariki Act 1989, to be fees and expenses of that person in his or her capacity as a lay advocate; and
- (b) the provisions of that section of that Act shall apply in relation to those fees and expenses accordingly.

Section 75: amended, on 15 April 2004, by section 44 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 75(a): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

76 Information relating to bodily samples to be included in annual report of Police

- (1) The Commissioner shall include, in every annual report prepared by him or her for the purposes of section 101 of the Policing Act 2008, the following information for the period under review:
- (a) the number of occasions on which a blood sample has been taken with the consent of a person given in response to a databank request:
 - (ab) the number of occasions on which a buccal sample has been taken with the consent of a person given in response to a databank request:
 - (b) the number of applications for compulsion orders, with the number of each type of compulsion order stated separately:
 - (c) the number of applications referred to in paragraph (b) that were granted, and the number that were refused:
 - (ca) the number of occasions on which a blood sample has been taken pursuant to a compulsion order:
 - (cb) the number of occasions on which a buccal sample has been taken pursuant to a compulsion order:
 - (cc) the number of occasions on which a blood sample has been taken pursuant to a databank compulsion notice:
 - (cd) the number of occasions on which a buccal sample has been taken pursuant to a databank compulsion notice:
 - (ce) the number of—
 - (i) databank compulsion notice hearings requested; and
 - (ii) Part 3 orders made, and the number of orders made that the databank compulsion notice is of no effect, in respect of those hearings:
 - (d) the number of—
 - (i) occasions on which a DNA profile obtained under a Part 2 procedure has been used as evidence against a person in a trial; and
 - (ii) persons referred to in subparagraph (i) in respect of whom a conviction has been entered as a result of the trial:
 - (da) the number of—
 - (i) occasions on which a DNA profile obtained under a Part 3 procedure has been used in support of an application for a suspect compulsion order under Part 2; and
 - (ii) suspect compulsion orders granted in respect of those applications:
 - (e) the number of occasions on which any constable has used or caused to be used force to assist a suitably qualified person to take a fingerprick or

- buccal sample pursuant to a compulsion order or databank compulsion notice:
- (ea) the number of occasions on which a buccal sample has been taken as a result of a Part 2A request:
 - (eb) the number of occasions on which a bodily sample has been taken under Part 2B:
 - (ec) the number of occasions on which a DNA profile was derived from a bodily sample taken under Part 2B:
 - (ed) the number of occasions on which a DNA profile derived from a bodily sample taken under Part 2B matched with DNA information referred to in section 24R(1)(a):
 - (ee) the number of occasions on which a DNA profile derived from a bodily sample taken under Part 2B matched DNA information collected from the scene of the offence in respect of which the bodily sample was taken:
 - (ef) the number of occasions on which a constable used reasonable force under section 54A(2):
 - (eg) the total number of DNA profiles stored on a Part 2B temporary databank at the end of the period under review:
 - (f) the total number of DNA profiles stored on a DNA profile databank at the end of the period under review, together with a breakdown of that total according to whether the bodily samples from which the DNA profiles were obtained were taken by consent or pursuant to a compulsion order or databank compulsion notice:
 - (g) the number of occasions on which a DNA profile obtained from evidence at the scene of an offence or in connection with an offence is matched with a DNA profile obtained under a Part 2 procedure:
 - (h) the number of occasions on which a DNA profile obtained from evidence at the scene of an offence or in connection with an offence is matched with a DNA profile on the DNA profile databank obtained under a Part 3 procedure.
- (2) The information required by subsection (1)(eb) to (eg) must be provided together with a breakdown of those totals according to the ethnicity of the persons from whom the samples were taken, and the number of young persons from whom the samples were taken, so far as that information is known by the Police.

Compare: 1978 No 65 s 29

Section 76 heading: amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 76(1)(ab): inserted, on 15 April 2004, by section 45(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(ca): inserted, on 15 April 2004, by section 45(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(cb): inserted, on 15 April 2004, by section 45(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(cc): inserted, on 15 April 2004, by section 45(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(cd): inserted, on 15 April 2004, by section 45(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(ce): inserted, on 15 April 2004, by section 45(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(d): substituted, on 15 April 2004, by section 45(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(da): inserted, on 15 April 2004, by section 45(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(e): substituted, on 15 April 2004, by section 45(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(e): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 76(1)(ea): inserted, on 15 April 2004, by section 45(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(eb): inserted, on 6 September 2010, by section 27(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 76(1)(ec): inserted, on 6 September 2010, by section 27(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 76(1)(ed): inserted, on 6 September 2010, by section 27(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 76(1)(ee): inserted, on 6 September 2010, by section 27(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 76(1)(ef): inserted, on 6 September 2010, by section 27(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 76(1)(eg): inserted, on 6 September 2010, by section 27(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 76(1)(f): substituted, on 15 April 2004, by section 45(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(g): added, on 15 April 2004, by section 45(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(1)(h): added, on 15 April 2004, by section 45(5) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 76(2): added, on 6 September 2010, by section 27(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

77 Offences

- (1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who,—
 - (a) for the purpose of the providing of a bodily sample pursuant to this Act, personates any other person; or

- (b) refuses to allow a bodily sample to be taken under a databank compulsion notice or under Part 2B and, as a result of that refusal, no sample is taken; or
 - (c) having been given a notice under section 50B requiring him or her to attend on a specified date and at a specified place and time to give a bodily sample under Part 2B, fails to comply with that notice.
- (2) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years who—
- (a) knowingly falsifies any DNA profile stored on a DNA profile databank, or a Part 2B temporary databank, by the addition, deletion, or modification of any information in that profile; or
 - (b) knowingly provides false information with the intent that it should be stored on a DNA profile databank or a Part 2B temporary databank; or
 - (c) knowing that he or she is not authorised to do so, adds to or deletes from a DNA profile databank, or a Part 2B temporary databank, any information relating to any person; or
 - (d) in contravention of section 24R or 27,—
 - (i) gains or attempts to gain access to a DNA profile databank or a Part 2B temporary databank; or
 - (ii) discloses any information stored on a DNA profile databank or a Part 2B temporary databank; or
 - (e) in contravention of section 24S or 28,—
 - (i) gains or attempts to gain access to a bodily sample to which that section applies; or
 - (ii) uses any such bodily sample.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who publishes any name or particular in contravention of section 14 or section 19.

Compare: 1976 No 19 s 29; 1980 No 94 s 59

Section 77(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 77(1)(a): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 77(1)(b): substituted, on 6 September 2010, by section 28(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(1)(c): added, on 6 September 2010, by section 28(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 77(2)(a): amended, on 6 September 2010, by section 28(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(b): amended, on 6 September 2010, by section 28(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(c): amended, on 6 September 2010, by section 28(4) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(d): amended, on 6 September 2010, by section 28(5)(a) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(d)(i): amended, on 6 September 2010, by section 28(5)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(d)(ii): amended, on 6 September 2010, by section 28(5)(b) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(e): amended, on 6 September 2010, by section 28(6) of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 77(2)(e)(i): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 77(2)(e)(ii): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 77(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

78 Breach of compulsion order or Part 3 order not punishable as contempt

No proceedings for contempt of court shall be brought in respect of any refusal or failure to comply with a compulsion order or a Part 3 order.

Section 78 heading: amended, on 15 April 2004, by section 47(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 78: amended, on 15 April 2004, by section 47(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

79 Indemnity

- (1) No proceedings, civil or criminal, shall lie against any person in respect of the taking of a fingerprick or buccal sample using force in accordance with section 54(2) or (3) or 54A(2).
- (2) Nothing in subsection (1) shall apply with respect to any proceeding on the ground of any negligent act or omission in the taking of any bodily sample.

Compare: 1962 No 135 s 58D; 1988 No 170 s 7

Section 79(1): amended, on 6 September 2010, by section 29 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

Section 79(1): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 79(1): amended, on 15 April 2004, by section 48 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 79(2): amended, on 15 April 2004, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

80 Regulations

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

- (a) prescribing procedures for the analysis of bodily samples taken pursuant to this Act;
- (b) prescribing procedures for the storage of bodily samples taken pursuant to this Act;
- (c) prescribing procedures relating to the undertaking of forensic comparisons, including (without limitation) procedures to ensure fairness and objectivity in the use of a DNA profile databank for the purpose of such comparisons;
- (d) providing for the administration of a DNA profile databank;
- (e) prescribing the forms of applications, notices, orders, and other documents for the purposes of this Act, and requiring the use of such forms;
- (f) prescribing the procedure for the service of notices and other documents for the purposes of this Act;
- (g) prescribing the amounts payable to any lawyer appointed pursuant to section 21 or section 41C(3);
- (h) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Section 80(a): amended, on 31 October 2003, by section 49(1) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 80(b): amended, on 31 October 2003, by section 49(2) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Section 80(g): amended, on 31 October 2003, by section 49(3) of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

81 Rules

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

82 Amendment to Summary Proceedings Act 1957

[Repealed]

Section 82: repealed, on 15 April 2004, by section 50 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

83 Transitional provision

- (1) Despite the amendments made to this Act by the Criminal Investigations (Bodily Samples) Amendment Act 2003, this Act continues to apply as if those amendments had not been made in respect of—
 - (a) a suspect request or a databank request to take a blood sample made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 and every matter arising out of that suspect request or databank request, until the blood sample is taken pursuant to that request;

- (b) an application for a suspect compulsion order, juvenile compulsion order, or databank compulsion order to take a blood sample made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 and every matter arising out of that application (including but not limited to any warrant issued), until the sample is taken pursuant to that order.
- (2) Leave may be sought to apply for a further databank compulsion order in relation to a databank compulsion order made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003, and the application must be dealt with under this Act as if the Criminal Investigations (Bodily Samples) Amendment Act 2003 had not been passed.
- (3) If leave is sought to apply for a further suspect compulsion order or further juvenile compulsion order in relation to a suspect compulsion order or juvenile compulsion order made before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003, the application for the further suspect compulsion order or further juvenile compulsion order must be dealt with as if it is an application for a further suspect compulsion order or further juvenile compulsion order under this Act as amended by the Criminal Investigations (Bodily Samples) Amendment Act 2003.

Section 83: added, on 15 April 2004, by section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

84 Savings

The amendments made to this Act by the Criminal Investigations (Bodily Samples) Amendment Act 2003 do not affect the validity or effect of anything done under this Act before the commencement of section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003.

Section 84: added, on 15 April 2004, by section 51 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Schedule

Relevant offences

s 2

Schedule: substituted, on 15 April 2004, by section 52 of the Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113).

Part 1

| Offence | Provision of Act |
|---|-------------------------|
| | <i>Crimes Act 1961</i> |
| Sexual violation | 128B(1) |
| Attempted sexual violation | 129(1) |
| Assault with intent to commit sexual violation | 129(2) |
| Inducing sexual connection by threat | 129A(1) |
| Inducing indecent act by threat | 129A(2) |
| Incest | 130(2) |
| Sexual connection with dependent family member | 131(1) |
| Attempted sexual connection with dependent family member | 131(2) |
| Indecent act with dependent family member | 131(3) |
| Meeting young person under 16 following sexual grooming, etc | 131B(1) |
| Sexual connection with child under 12 | 132(1) |
| Attempted sexual connection with child under 12 | 132(2) |
| Indecent act on child under 12 | 132(3) |
| Sexual connection with young person under 16 | 134(1) |
| Attempted sexual connection with young person under 16 | 134(2) |
| Indecent act on young person under 16 | 134(3) |
| Indecent assault | 135 |
| Exploitative sexual connection with person with significant impairment | 138(1) |
| Attempted exploitative sexual connection with person with significant impairment | 138(2) |
| Exploitative indecent act with person with significant impairment | 138(4) |
| Murder | sections 167 and 168 |
| Manslaughter | section 171 |
| Attempt to murder | section 173 |
| Wounding with intent to cause grievous bodily harm | section 188(1) |
| Wounding with intent to injure | section 188(2) |
| Injuring with intent to cause grievous bodily harm | section 189(1) |
| Injuring with intent to injure, or with reckless disregard for the safety of others | section 189(2) |

| Offence | Provision of Act |
|--|---|
| Aggravated wounding | section 191(1) |
| Aggravated injury | section 191(2) |
| Infecting with disease | section 201 |
| Abduction for purposes of marriage or sexual connection | 208 |
| Kidnapping | 209 |
| Burglary | section 231 |
| Aggravated burglary | section 232 |
| Robbery | section 234 |
| Aggravated robbery | section 235 |
| Assault with intent to rob | section 236 |
| | <i>Crimes Act 1961 (before commencement of Crimes Amendment Act 2003)</i> |
| Robbery | section 234 |
| Aggravated robbery | section 235 |
| Assault with intent to rob | section 237 |
| Aggravated burglary | section 240A |
| Burglary | section 241 |
| Entering with intent | section 242 |
| | <i>Crimes Act 1961 (before commencement of Crimes Amendment Act 2005)</i> |
| Sexual violation | section 128 |
| Attempt to commit sexual violation | section 129 |
| Inducing sexual connection by coercion | section 129A |
| Incest | section 130 |
| Sexual intercourse with girl under care or protection | section 131 |
| Sexual intercourse with girl under 12 | section 132(1) |
| Attempted sexual intercourse with girl under 12 | section 132(2) |
| Indecency with girl under 12 | section 133 |
| Sexual intercourse with girl between 12 and 16 | section 134(1) |
| Indecency with girl between 12 and 16 | section 134(2) |
| Indecent assault on woman or girl | section 135 |
| Sexual intercourse with severely subnormal woman or girl | section 138 |
| Abduction of woman or girl | section 208 |
| Abduction of child under 16 | section 210 |

Schedule Part 1: amended, on 20 May 2005, by section 10 of the Crimes Amendment Act 2005 (2005 No 41).

Part 2

Offences

Hijacking
 Other crimes relating to aircraft
 Crimes relating to international airports

Smuggling migrants
 Trafficking in people by means of coercion or deception
 Compelling indecent act with animal
 Sexual conduct with children and young people outside New Zealand
 Counselling or attempting to procure murder
 Conspiracy to murder
 Discharging firearm or doing dangerous act with intent
 Using any firearm against law enforcement officer, etc
 Commission of crime with firearm
 Acid throwing
 Poisoning with intent
 Endangering transport
 Abduction of young person under 16
 Theft or stealing
 Theft by person in special relationship
 Theft of animals
 Theft by spouse
 Being in possession of an instrument for conversion
 Being disguised or in possession of instruments for burglary
 Arson
 Attempted arson
 Intentional damage

Being in possession of instrument for conversion
 Being armed with intent to break or enter
 Being disguised or in possession of instruments for burglary
 Arson
 Attempted arson
 Wilful damage (aggravating factors)
 Wrecking
 Attempting to wreck

Inducing sexual intercourse under pretence of marriage
 Indecent act between woman and girl
 Sexual conduct with children outside New Zealand
 Abduction of child under 16

Terrorist bombing
 Financing of terrorism

Provision of Act

Aviation Crimes Act 1972
 section 3
 section 5
 section 5A

Crimes Act 1961
 section 98C
 section 98D
 section 142A
 section 144A

section 174
 section 175
 section 198
 section 198A
 section 198B
 section 199
 section 200
 section 203
 section 210
 section 219
 section 220
 section 221
 section 222
 section 227
 section 233

section 267
 section 268
 section 269

Crimes Act 1961 (before commencement of Crimes Amendment Act 2003)
 section 229
 section 243
 section 244

section 294
 section 295
 section 298(1)
 section 301
 section 302

Crimes Act 1961 (before commencement of Crimes Amendment Act 2005)
 section 137
 section 139
 section 144A
 section 210

Terrorism Suppression Act 2002
 section 7
 section 8

| Offences | Provision of Act |
|--|-------------------------|
| Recruiting members of terrorist groups | section 12 |
| Participating in terrorist groups | section 13 |

Schedule Part 2: amended, on 20 May 2005, by section 10 of the Crimes Amendment Act 2005 (2005 No 41).

Part 3

Schedule Part 3: added, on 6 September 2010, by section 30 of the Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46).

| Offences | Provision of Act |
|--|--------------------------------|
| | <i>Animal Welfare Act 1999</i> |
| Wilful ill-treatment of animals | section 28 |
| Reckless ill-treatment of animals | section 28A |
| | <i>Arms Act 1983</i> |
| Carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for lawful, proper, and sufficient purpose | section 45 |
| Unlawful possession of pistol or restricted weapon | section 50 |
| Unlawful carriage or possession in public place of firearm, airgun, pistol, ammunition, explosive, or restricted weapon | section 51 |
| Possession of firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive at time of committing offence | section 54(2) |
| Carrying firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive with criminal intent | section 55 |
| | <i>Crimes Act 1961</i> |
| Indecent act in public place | section 125 |
| Indecent act with intent to insult or offend | section 126 |
| Aggravated assault | section 192 |
| Assault with intent to injure | section 193 |
| Male assaults female | section 194(b) |
| Cruelty to a child | section 195 |
| Disabling | section 197 |
| Possession of offensive weapons or disabling substances | section 202A |
| Assault with weapon | section 202C |
| Receiving (if the value of the property does not exceed \$1,000) | section 246 |
| Threatening acts | section 308 |
| | <i>Land Transport Act 1998</i> |
| Contravention of section 7 or section 22 involving injury | section 36 |
| Contravention of section 7 by causing death of another person | section 36AA |
| Person in charge of motor vehicle causing injury or death | section 61 |

Offences**Provision of Act**

Peeping or peering into dwellinghouse

Summary Offences Act 1981

section 30

Schedule Part 3: amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Criminal Investigations (Bodily Samples) Amendment Act 2009

| | |
|----------------|-----------------|
| Public Act | 2009 No 46 |
| Date of assent | 2 November 2009 |
| Commencement | see section 2 |

1 Title

This Act is the Criminal Investigations (Bodily Samples) Amendment Act 2009.

2 Commencement

- (1) This Act, except for Part 2, comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) Part 2 comes into force on a date to be appointed by the Governor-General by Order in Council, which date must not be earlier than the date appointed under subsection (1).

Section 2(1): Criminal Investigations (Bodily Samples) Amendment Act 2009 (except Part 2), brought into force, on 6 September 2010, by the Criminal Investigations (Bodily Samples) Amendment Act 2009 Commencement Order 2010 (SR 2010/220).

Part 1

New authority to take and retain bodily samples, and other amendments to principal Act

Other amendments to principal Act

31 Savings provision relating to new relevant offences

For the purposes of Part 3 of the principal Act, a conviction entered by any court before the commencement of section 30 of this Act for an offence described in Part 3 of the Schedule of the principal Act (as added by section 30) is not a conviction for a relevant offence.

Reprints notes

1 *General*

This is a reprint of the Criminal Investigations (Bodily Samples) Act 1995 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

District Court Act 2016 (2016 No 49): section 261

Criminal Investigations (Bodily Samples) Amendment Act 2015 (2015 No 98)

Criminal Investigations (Bodily Samples) Amendment Act 2013 (2013 No 112)

Legislation Act 2012 (2012 No 119): section 77(3)

Criminal Procedure Act 2011 (2011 No 81): section 413

Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13): section 100(3)

Legal Services Act 2011 (2011 No 4): section 144

Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2): section 55

Criminal Investigations (Bodily Samples) Amendment Act 2009 (2009 No 46)

Policing Act 2008 (2008 No 72): sections 116(a)(ii), (v), (vii), (b), (d), 130(1), (4)

Criminal Investigations (Bodily Samples) Amendment Act 2008 (2008 No 9)

Sentencing Amendment Act 2007 (2007 No 27): section 58

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98)

Crimes Amendment Act 2005 (2005 No 41): section 10

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Corrections Act 2004 (2004 No 50): sections 206, 235(1)

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 50

Criminal Investigations (Bodily Samples) Amendment Act 2003 (2003 No 113)

Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)

Legal Services Act 2000 (2000 No 42): section 128

Criminal Investigations (Blood Samples) Act Commencement Order 1996 (SR 1996/189)