
OPENBAAR MINISTERIE

Public Prosecution Service
**DNA Testing
(Convicted Persons) Act**

Introduction

Under the DNA Testing (Convicted Persons) Act, persons who have been convicted of an offence for which pre-trial detention may be imposed must provide a compulsory tissue sample. This publication is intended for people who have been convicted. It tells you what the legislation means, who has to give DNA samples and what you are expected to do.

DNA Testing (Convicted Persons) Act

The DNA Testing (Convicted Persons) Act makes it possible to take tissue samples from certain groups of convicted persons. The Act plays an important role in preventing and detecting crime, and prosecuting persons whose DNA is found at the scene of a crime. The order to take tissue samples is given by the Public Prosecutor.

Which convicted persons does the Act apply to?

The Act applies to two categories of convicted persons:

- persons who have been convicted of an offence for which pre-trial detention may be imposed, and who have had a custodial sentence, detention order or alternative sanction imposed on them;
- persons who, at the moment at which the Act came into force, had previously been given a custodial sentence or detention order for this type of offence which they are currently serving, or have yet to serve.

The Act applies to adults and minors alike. Have you already had a DNA sample taken as part of an investigation or in connection with a previous conviction? Then you will not need to give a new sample, unless your profile has been removed from the DNA database, for example because you were acquitted.

Type of offence

Everyone who has been convicted of an offence for which pre-trial detention may be imposed must give a DNA sample. Article 67 of the Code of Criminal Procedure states which offences these are. Persons convicted of an offence to which a statutory maximum sentence of at least four years applies must give DNA. But the Act also applies to a number of offences to which a shorter maximum sentence applies, such as common assault. These are also specified in article 67 of the Code of Criminal Procedure. So, the maximum sentence for an offence as laid down by law is what counts, not the sentence you received from the court.

Type of sentence or order

Het gaat om mensen die door de rechter zijn veroordeeld tot:

The Act applies to persons sentenced to the following:

- a (suspended) custodial sentence or an order such as a hospital order (TBS);
- a (suspended) alternative sanction;
- a (suspended) placement in a Persistent Offenders Institution (ISD);
- a (suspended) placement in a psychiatric hospital (PPZ);
- a (suspended) placement in a youth protection and custody institution (PIJ).

The Act does not apply to people who have received only a fine (geldstraf).

The Act applies to:

Persons who were sentenced after 1 May 2010 for an offence for which pre-trial detention may be imposed, or persons who were sentenced before 1 May 2010 but who had not served their full sentence or order, or who still needed to begin to serve their sentence, by that date.

Where is the sample taken?

A DNA sample is taken on the orders of the public prosecutor. The convicted person will at that moment either be in a custodial institution or will still be at liberty. Convicted persons not yet held in a custodial institution must report to a police station. The order will state the date and time, and the name and location of the police station. The DNA sample will be taken by specially trained officers.

If you fail to report to the station, the public prosecutor will issue a warrant of arrest. This means you can be arrested and taken to a police station at any moment, where you will be required to give a mouth swab. You may, for example, be arrested during a vehicle spot check, or at an airport passport check. You will have to give a DNA sample sooner or later.

If you are being held in an institution, your DNA will be taken there by a specially trained member of staff.

How long is data kept?

The offence of which a person is convicted determines how long the DNA profile and tissue sample are kept. If the offence carries a maximum sentence of at least six years, your data will be kept for 30 years. If the offence was less serious (carrying a maximum sentence of fewer than six years), tissue samples and the DNA profile can be kept for no longer than 20 years.

The Netherlands Forensic Institute (NFI) is responsible for generating DNA profiles from tissue samples. It also ensures that the DNA profile is stored in a special database. The NFI will store the tissue sample and ensure that it is destroyed and the profile removed from the DNA database when appropriate. Samples are only destroyed if the Public Prosecution Service gives the order to do so, or when the statutory period for storing them has expired.

Taking the sample

Taking a DNA tissue sample is a short, simple and painless procedure. All you need to do is open your mouth. A sample of mucus is taken from the inside of your cheek by a specially trained officer, prison officer, doctor or nurse. He or she will scrape a cotton bud or soft brush against the inside of your cheek. This will collect enough mucus for DNA testing, which will take place in the laboratory of the Netherlands Forensic Institute.

Fingerprinting

Your DNA tissue sample will only be taken after your identity has been recorded and you have been fingerprinted. You are required by law to cooperate.

Submitting an objection

You may not object to giving a DNA tissue or to fingerprinting. A sample must always be taken, whether in a custodial institution or a police station. You can, however, object to your DNA being stored in the DNA database. To do so, you must submit your objection to the registry of the court which convicted you. Your lawyer will be able to help you with this. Additional information is also available in the publication 'Bezwaar en beroep tegen een beslissing van de overheid' (in Dutch only), which can be downloaded from www.rijksoverheid.nl. If the court upholds your objection, your DNA material will be destroyed. If the court rules your objection is unfounded, a DNA profile will be generated for the DNA database. You may not appeal against the court's decision.

If your case goes to appeal

The order to take your DNA sample will be given shortly after conviction. Whether or not your case goes to appeal is irrelevant; you will still have to give a DNA sample. Your tissue sample and DNA profile will only be destroyed if you are acquitted on appeal.

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