

THE DNA EVIDENCE ACT, 2016 – THE COURT’S ROLE

(NOTE: “COURT” IS DEFINED IN THE ACT AS THE RESIDENT MAGISTRATE’S COURT (PARISH COURT) OR THE SUPREME COURT, THEREFORE THE MAJORITY OF THE ORDERS CAN BE MADE AT EITHER LEVEL. HOWEVER, THERE IS AN APPLICATION WHICH CAN ONLY HEARD BY THE SUPREME COURT. THIS WILL BE HIGHLIGHTED ACCORDINGLY.)

<u>TYPE OF ORDER</u>	APPLICANT	COURT	CONSIDERATIONS	RELEVANT SECTION OF THE ACT
Order authorizing the taking of an intimate sample from a protected person or child	Detention Officer	Parish Court or Supreme Court	(a) Grounds on which the authorisation given by authorizing officer (b) Reasons (if any) given for refusal to consent (c) Nature of the offence (d) Interests of justice (best interest of the protected person/child and interest of the victim)	s. 22
Order authorizing the taking of an intimate sample from a person (other than a protected person or child)	Detention Officer	Parish Court or Supreme Court	Interests of justice with regard to the best interest of the person concerned, interest of the victim and the protection of society.	s. 23
Order authorizing the taking of an intimate sample from a former offender* <i>(*Note: Ancillary orders and directions can be made in support having regard to s. 20 or 21)</i>	Detention Officer	Parish Court or Supreme Court	Public interest + (a) number of relevant offences the former offender has been convicted (b) seriousness of the relevant offence (c) nature of the relevant offence (d) duration or term of imprisonment or sentence of detention	s. 31(5)-(6)

			<p>(e) period elapsed since the expiry of the sentence (where sexual offence – end of notification period)</p> <p>(f) if convicted as a child - the age of the former offender at the time of conviction</p> <p>(g) any other appropriate matter</p>	
Order authorizing the taking of a sample for elimination purposes (General)	Detention Officer	Parish Court or Supreme Court	Interests of justice	s. 36(5)
Order authorizing the taking of a sample from a relevant person* for elimination purposes <i>(*Note: relevant person is defined at s.37(1))</i>	Detention Officer	Parish Court or Supreme Court	Interests of justice	s. 37(5)
Order authorizing the taking of a sample for investigations in relation to missing persons	Detention Officer	Parish Court or Supreme Court	Interests of justice	s. 39(5)
Order authorizing the Commissioner of Police to cause a sample to be taken from an unknown person*	<ul style="list-style-type: none"> ➤ The Chief Medical Officer ➤ The owner/manager of a hospital or nursing home 	Supreme Court	(a) evidence by a registered medical practitioner that the unknown person is suffering from a serious illness or has sustained a severe injury and he is unable to identify himself and the duration of the inability is uncertain	s. 40(4)

<p>(*Note: this order also authorizes the retaking of a sample – s. 41(6))</p>	<p>(where the unknown person is receiving care) ➤ The Commissioner of Police</p>		<p>(b) the taking of a sample, the generation of a DNA profile and the entry of the DNA profile in the identification division may assist with the identification of the unknown person</p>	
<p>Direction to make sample available for independent testing</p>	<p>Person whose sample was taken or his legal representative</p>	<p>Parish Court or Supreme Court</p>	<p>Sufficiency of the sample</p>	<p>s. 44</p>
<p>Order for retention of sample or DNA profile</p>	<p>DPP, Commissioner of Police or Commissioner of INDECOM <i>(Note: person who gave sample must be notified of the application and has the right to be heard- s. 47(3))</i></p>	<p>Parish Court or Supreme Court</p>	<p>Interests of justice</p>	<p>s. 47(2)</p>
<p>Order for destruction of sample or DNA profile after 8 years</p>	<p>Person whose sample was taken <i>(Note: The DPP, the Commissioner of Police and where applicable the Commissioner of INDECOM must be notified of the application and has the</i></p>	<p>Parish Court or Supreme Court</p>	<p>Interests of justice + (a) a decision has not been taken whether or not to institute proceedings against the person for the relevant offence concerned in connection with which the sample was taken or DNA profile generated (b) the investigation of that relevant offence has not been concluded (c) the sample or DNA profile are likely to be required for the prosecution of an offence connected with the event, incident or circumstances the subject of the offence concerned –</p>	<p>s. 48</p>

	<i>right to be heard – s. 48(4))</i>		<ul style="list-style-type: none"> (i) for use as evidence (ii) for disclosure to or use by a defendant in such proceedings (iii) to support the admissibility of any evidence on which the prosecution may seek to rely in such proceedings (d) whether the person concerned has any previous conviction for a similar offence to which the sample relates (e) nature and seriousness of that relevant offence (f) whether any victim (alleged or intended) was at the time a child, protected person or associated with either (g) the age of the person concerned at the time when the sample was taken (h) any other appropriate matter 	
Order for the person who signed the evidentiary certificate to attend Court and give evidence	Either party to a criminal proceeding (or Court on its own motion)	Parish Court or Supreme Court	Interests of justice	s. 65(2)