

Issuer:	Riigikogu
Type:	act
In force from:	01.09.2023
In force until:	In force
Translation published:	26.04.2023

Forensic Examination Act

Passed 18.01.2023

Chapter 1 General Provisions

§ 1. Scope of regulation of Act

(1) This Act provides the legal status of a forensic expert, state forensic institution, its contracting partner, registered private expert and another person appointed as an expert by a court, prosecutor's office, investigative body or extra-judicial proceedings authority (hereinafter jointly *proceedings authority*) and the grounds for the creation of the rights and obligations of an expert in criminal proceedings, misdemeanour proceedings, civil and administrative court proceedings and in other proceedings prescribed by law (hereinafter jointly *proceedings*) in addition to the provisions of the court procedure laws and in conducting for charge of examinations which are not related to proceedings.

(2) The provisions of the Code of Criminal Procedure, the Code of Misdemeanour Procedure, the Code of Civil Court Procedure, the Code of Administrative Court Procedure and the Administrative Procedure Act apply to criminal, misdemeanour, civil and administrative court proceedings prescribed in this Act, taking account of the special rules of this Act.

§ 2. Examination and study

(1) For the purposes of this Act, an examination means the professional activity of a person appointed as an expert in proceedings or at a state forensic institution in an examination for charge not related to proceedings, the purpose of which is to study the submitted material and to provide a reasoned expert opinion on the basis of the examination task.

(2) An expert opinion issued as a result of an examination is drawn up in a typewritten or word-processed form in accordance with the requirements provided in procedural laws or other laws.

(3) A study is organised for the purpose of conducting an examination, deciding on its conducting or where prescribed by law. A study is not drawn up as an independent expert opinion, unless the study is organised for deciding on the conducting of an examination or where this is prescribed by law.

(4) An expert who conducted a study is liable for providing a knowingly incorrect expert opinion within the framework of the study.

§ 3. Expert

(1) For the purposes of this Act, an expert is a person who uses non-legal expertise in forensic examination, and legal expertise in the cases provided by law.

(2) An expert may be a forensic expert, a registered private expert, an employee of a contracting partner of a state forensic institution or any other natural person appointed by proceedings authority.

(3) A proceedings authority may appoint an expert by name or appoint only a state forensic institution and leave the task of appointing a specific expert to the state forensic institution or its contracting partner or appoint another person conducting examinations and leave the appointment of a specific expert to the decision of the latter.

§ 4. Processing of personal data

(1) In order to prepare for and conduct an examination and a study, a state forensic institution, its contracting partner, a registered private expert or another person appointed as an expert by a proceedings authority and

their auxiliary staff have the right to process the personal data required for conducting a specific examination or study, including specific categories of personal data.

(2) When preparing for and conducting an examination commissioned in criminal and misdemeanour proceedings, the activities of a state forensic institution are deemed to be the activities of a law enforcement authority for the purposes of subsection 2 of § 13 of the Personal Data Protection Act, and the processing of personal data is based on the provisions established for a law enforcement authority.

(3) In proceedings not specified in subsection 2 of this section, when preparing for and conducting an examination or a study conducted on the basis of other laws and an examination for charge not related to proceedings, Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 04.05.2016, pp 1–88) apply to the activities of the state forensic institution and its contracting partners.

(4) When preparing for and conducting an examination commissioned in proceedings, a state forensic institution, its contracting partner, a registered private expert or another person appointed as an expert by a proceedings authority is a joint personal data controller together with the authority which commissioned the examination.

§ 5. Exercise of data subject's rights

(1) Upon processing of personal data, when preparing for and conducting an examination commissioned in proceedings, the rights of a data subject are exercised in accordance with the rules provided in the court procedure laws specified in subsection 2 of § 1 of this Act.

(2) Upon processing of personal data, when preparing for and conducting an examination or study on the basis of other laws, and an examination for charge not related to proceedings, the rights of a data subject are exercised in accordance with the rules provided in Regulation (EU) 2016/679 of the European Parliament and of the Council.

Chapter 2 Forensic Expert and State Forensic Institution

Subchapter 1 Forensic Expert

§ 6. Forensic expert

A forensic expert is a person employed by a state forensic institution whose main duty is to conduct examinations.

§ 7. Requirements for forensic expert

(1) A person may work as a forensic expert, provided the person:

- 1) has active legal capacity;
- 2) is proficient in the Estonian language at the level provided in the Language Act;
- 3) has acquired higher education in an institution of higher education of the Republic of Estonia or where the person's education corresponds to this level;
- 4) is of high moral character;
- 5) has the abilities and personal characteristics necessary for working as an expert;
- 6) has completed the training of a forensic expert at a state forensic institution.

(2) A person who has foreign professional qualifications may also work as a forensic expert where their professional qualifications have been recognised in accordance with the Recognition of Foreign Professional Qualifications Act. A competent authority provided in subsection 2 of § 7 of the Act referred to is the Estonian Forensic Science Institute.

(3) A person may not work as a forensic expert where the person:

- 1) has been convicted of an intentionally committed criminal offence;
- 2) has been punished for violation of the requirements of the Anti-Corruption Act;
- 3) is in a close blood relationship (grandparents, parents, brothers, sisters, children or grandchildren) or a relationship by marriage (spouse, spouse's parents, brothers, sisters or children) with the employee who has direct control over their position or with their immediate superior.

(4) A person who is a suspect or accused of committing an intentional criminal offence or a person subject to proceedings in a misdemeanour provided in the Anti-corruption Act may not be employed as a forensic expert or trained as a forensic expert.

(5) The prohibition provided in clauses 1 and 2 of subsection 3 of this section does not extend to any person whose criminal record has been deleted from the criminal records database in accordance with the Criminal Records Database Act.

§ 8. Background check

(1) The head of a state forensic institution or an employee appointed by them has the right to conduct a background check of:

- 1) a person who wishes to commence employment as a forensic expert or training of a forensic expert specified in clause 6 of subsection 1 of § 7 of this Act;
- 2) a person who wishes to commence employment in a position specified in subsection 3 of § 33 of this Act.

(2) The purpose of a background check is to ascertain the compliance of the persons specified in subsection 1 of this section with the requirements of this Act and their reliability. In the case of a justified need, a background check may be performed repeatedly during employment.

(3) In the course of a background check, the following personal data of a person specified in clause 1 of subsection 1 of this section may be processed:

- 1) data enabling verification of identity;
- 2) contact details;
- 3) data concerning education, studies and language skills;
- 4) data concerning employment and previous work experience;
- 5) data concerning participation in economic activities for the past ten years;
- 6) data concerning a penalty in force which was imposed for a criminal offence specified in clauses 1 and 2 of subsection 3 of § 7 of this Act;
- 7) data concerning participation of a person as a suspect or accused in criminal proceedings or as a person subject to proceedings as at the time of verification in misdemeanour proceedings conducted for violation of the requirements of the Anti-corruption Act;
- 8) data from sources directed to the general public and from public sources.

(4) In the case of a person specified in clause 2 of subsection 1 of this section, the data listed in clauses 1, 2, 6 and 7 of subsection 3 of this section may be processed. For the purposes of a background check, a person may be required to provide a document concerning such data.

(5) In order to verify the correctness of the data specified in subsection 3 of this section and the reliability of a person, the head of a state forensic institution or an employee appointed by them has the right to:

- 1) obtain data from the database specified in subsection 1 of 43¹ of the Public Information Act;
- 2) obtain information from state and local government authorities and natural and legal persons concerning the person being checked;
- 3) interview themselves the person checked, and representatives of their employer and educational institution and other persons and, where necessary and with the consent of the person to be interviewed, take a written explanation from them;
- 4) obtain data available from sources directed to general public and from public sources.

(6) A person is notified of processing of their personal data and performance of a background check and they have the right to examine the data concerning them which were collected in the course of the background check. Access to the data provider's conclusions on a person may be restricted to the extent necessary to ensure national security, proceeding of offences and protection of the rights and freedoms of others. A person has the right to examine the final conclusion of their background check.

(7) Personal data processed in the course of a background check and specified in subsection 2 of this section are retained for the term of three years as of the performance of the background check.

§ 9. Forensic expert's oath

(1) Upon appointment as a forensic expert, a person takes the following oath to the head of a state forensic institution:

"I, (name), swear to perform the duties of a forensic expert with honesty and to provide expert opinions impartially, according to my specific knowledge and conscience. I am aware that knowing provision of a false expert opinion is punishable in accordance with the provisions of § 321 of the Criminal Code."

(2) A forensic expert signs the oath and indicates the date of taking the oath. The signed text of the oath is annexed to a copy of the employment contract kept at the state forensic institution. A digitally signed text of the oath is kept in the person's electronic file.

Subchapter 2

State forensic institution

§ 10. State forensic institution

(1) A state forensic institution (hereinafter *forensic institution*) is a state agency the main objective of whose activities is to conduct examinations. In addition, the forensic institution is a centre of national and international forensic expertise which is also engaged in development and study activities, the management of collections and databases of reference samples and is a competent authority in international exchange of information, where this is specified by law.

(2) The state forensic institution is the Estonian Forensic Science Institute.

(3) The statutes of the Estonian Forensic Science Institute is established by a regulation of the minister in charge of the policy sector.

(4) The minister in charge of the policy sector enters into an employment contract with the head of the forensic institution for a term of five years. This period may be extended repeatedly by five years.

§ 11. Competence of forensic institution

(1) The forensic institution is competent to conduct, examinations itself or through its contracting partners and, in the cases specified by law, studies in areas where expert opinion is required.

(2) The list of examinations conducted at the forensic institution is established by a regulation of the minister in charge of the policy sector.

(3) The requirements for the conduct of an examination and drawing up an experts report and the principles for the maintenance of collections of samples necessary for the conduct of examinations may be established by a regulation of the minister in charge of the policy sector.

(4) The forensic institution may perform examinations for charge to natural and legal persons (hereinafter *requesting person*) not related to proceedings (hereinafter *examination for charge*) where this does not hinder the performance of the duties relating to examinations conducted in its proceedings.

(5) The list of examinations for charge and the procedure for the conduct of examinations and drawing up of expert's opinions and the list of data to be maintained are established by a regulation of the minister in charge of the policy sector.

(6) The forensic institution may order studies necessary for examinations from outside.

(7) The forensic institution may supply products or provide services where this is inextricably linked to its principal duty and does not hinder the performance of the duties relating to examinations conducted in its proceedings.

(8) The forensic institution is the competent authority specified in Articles 4(1) and 5(1) of Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 04.07.2001, pp 6–10).

§ 12. Conditions of conduct of examinations for charge

(1) Examinations for charge may be conducted on the following conditions:

1) the forensic institution prefers examinations relating to proceedings to examinations for charge; the time to be agreed upon for conducting an examination for charge depends on the workload of the expert and the forensic institution has the right to unilaterally extend the time initially agreed upon, whereas in such case the requesting person has the right to cancel the contract without paying any fee for the examination;

2) an examination for charge is not conducted anonymously but the requesting person ensures that the person concerned with the conducting or result thereof or the legal representative of such person has granted a consent to the forensic institution for conducting a specific examination, except in the case the examination for charge is directly required for such health services for the provision of which the consent of a patient or their legal representative is not required;

3) the materials and data submitted for conducting an examination for charge must be legal and safe and relevant to conducting the examination;

4) conducting of an examination for charge may not induce commitment of crimes or prejudice their detection;

5) conducting of an examination for charge may not damage the interests of the Republic of Estonia or the interests in the administration of justice;

6) no examinations for charge are conducted for verifying or supplementing an examination already conducted in the proceedings or for preventing an examination in criminal or misdemeanour proceedings;

7) conducting of an examination for charge may not damage morals or otherwise be in conflict with the principles of ethics of the forensic institution.

(2) A requesting person ordering an examination for charge is responsible for the legality, safety and relevance of the materials and data submitted to the forensic institution for an examination for charge. The forensic institution has the right to verify the data submitted.

(3) The forensic institution may refuse to conduct an examination for charge.

(4) Where, upon conducting of an examination for charge already commenced, it becomes evident that the examination is in conflict with law or the conditions of examinations for charge, the forensic institution discontinues the examination without charging a fee or refunds to the requesting person the fee already received. The forensic institution need not refund the fee in the case the circumstances hindering the conduct of an examination for charge were or had to be known to the requesting person at the time of ordering the examination. The forensic institution need not transfer the results of an examination for charge conducted until the examination was discontinued or other data relating to the examination to the requesting person and need not compensate the persons concerned with the examination for the costs relating to ordering or conducting of the examination.

(5) The data and materials of an examination for charge are stored and maintained separately in accordance with the rules provided in subsection 5 of § 11 of this Act. The data obtained upon ordering and conducting of examinations for charge, which are not personal data provided in § 4 of this Act, and materials are stored at the forensic institution for up to five years as of the completion of the examination for charge, unless another term is provided by law.

(6) A person who conducts an examination for charge and persons who participate in it or were present at it and the forensic institution must maintain the confidentiality of the circumstances which became known to them upon ordering or conducting the examination, except in the case the submission or disclosure thereof is permitted by law or mandatory.

§ 13. Contracting partner of forensic institution

(1) In order to conduct an unlimited number of examinations or studies that are included in the list of examinations but for which the forensic institution lacks the capabilities, the forensic institution may enter into an administrative contract with a suitable service provider. Other contracts may also be entered into for the purpose of conducting a single examination or study.

(2) Where a proceedings authority commissions a forensic institution to conduct an examination, the forensic institution forwards, in the case specified in subsection 1 of this section, the examination ruling to its contracting partner, who appoints a specific expert. The proceedings authority may even itself forward the examination ruling to a contracting partner of the forensic institution who appoints a specific expert.

(3) Where a person who has not been sworn in is appointed an expert at a contracting partner of the forensic institution, they are warned against a criminal penalty for knowingly giving an incorrect expert opinion.

(4) A contracting partner of the forensic institution ensures in an administrative contract that its employees who conduct examinations comply with the requirements for forensic experts provided in clauses 1–5 of subsection 1 and subsections 2–5 of § 7 of this Act.

(5) A contracting partner of the forensic institution located in a foreign state, under a single contract specified in subsection 1 of this section, ensures that the employees who conduct examinations or studies have sufficient professional competence for such purpose.

§ 14. Conduct of examination and study in foreign state

(1) With the consent of a proceedings authority, the forensic institution may order an examination required in criminal proceedings from a foreign forensic or another institution where this cannot be done at the forensic institution.

(2) The forensic institution may order a study necessary for an examination from a foreign forensic or another institution where this cannot be done at the forensic institution.

(3) A forensic expert may conduct a study necessary for an examination in a foreign forensic or another institution where this cannot be done at the forensic institution.

§ 15. Conduct of examination and study for foreign state

The provisions concerning examinations for charge apply to conduct of examinations or studies for a foreign forensic institution or another foreign person, unless otherwise provided by interstate agreements or international treaties.

Chapter 3

Databases

§ 16. Forensic information management system

(1) Data are processed in the forensic information management system in order to:

- 1) conduct examinations and studies at the forensic institution and keep records of these and determine the priority thereof;
- 2) manage the information relating to databases and collections of reference samples.

(2) The forensic information management system is a database established by a regulation of the minister in charge of the policy sector.

(3) The controller of the database is the Ministry of Justice and its processor is the Estonian Forensic Science Institute.

(4) Data concerning the following are entered in the forensic information management system:

- 1) person who commissions and conducts examinations and studies;
- 2) requesting person who orders and person who conducts examinations for charge;
- 3) persons involved in examinations and studies;
- 4) materials and evidence submitted for examinations and studies;
- 5) reference material;
- 6) databases and collections of reference samples.

(5) The name, personal identification code or registry code and contact details of persons involved in an examination and study and the requesting person ordering an examination for charge are entered in the forensic information management system.

(6) Data relating to examinations conducted in proceedings are stored, archived and deleted within the term provided in procedural laws. Where there is no time limit in procedural laws, the data are stored for the term of ten years after the examination, after which they are deleted.

(7) The data of examinations for charge, including personal data provided in subsection 5 of this section, are stored in the forensic information management system for the term of five years after the examination, after which they are deleted. The data for a DNA analysis for charge made for the purpose of establishment of parentage is stored for a maximum of 20 years, after which they are deleted.

(8) The statutes of the forensic information management system, including the specific composition of the data are established by a regulation of the minister in charge of the policy sector.

§ 17. National offence proceedings biometrics database

(1) The national offence proceedings biometrics database (hereinafter *offence proceedings biometrics database*) processes the biometric data of persons which are collected on the basis of law and entered in the database and which are not deemed to be part of the automated biometric identification system database (hereinafter *ABIS database*), biographical data and data relating to taking and collecting of biographical and biometric data for the purpose of:

- 1) exclusion in the cases provided in § 100 of the Code of Criminal Procedure, § 92¹ of the Military Service Act, § 45¹ of the Police and Border Guard Act, § 73 of the Rescue Service Act and § 36 of this Act;
- 2) verification of identity or identification of a person in the cases provided in §§ 5⁵, 18 and 96 of the Imprisonment Act and in other cases provided by law;
- 3) proceedings, detection and prevention of offences in the cases provided in § 99¹ of the Code of Criminal Procedure, § 31¹ of the Code of Misdemeanour Procedure and § 18 of the Imprisonment Act;
- 4) conduct of examinations and studies in the cases provided in §§ 99 and 99² of the Code of Criminal Procedure, § 102 of the Code of Misdemeanour Procedure, §§ 40 and 41 of the Law Enforcement Act, § 67¹ of the Imprisonment Act and § 2 of this Act;
- 5) performance of an obligation arising from an international treaty approved by the Riigikogu or other international law binding on Estonia;
- 6) processing of data entered in the database on the basis of an application of a person and for the specified purpose in the cases provided in § 20 of this Act;
- 7) technical testing for the purpose of quality control or contamination control.

(2) Ten-finger plain impressions and rolled impressions, plain palm prints and writer's palm prints taken during dactyloscopic examination of a person and friction ridge skin impressions collected at a crime scene or other object are processed and stored in the ABIS database. Biographical data of a person and data concerning dactyloscopic examination of the person or collection of friction ridge skin impressions are processed and stored in accordance with the provisions concerning the biometric offence proceedings database.

(3) A facial image of a person which is an image of the physical characteristics of the person's face and which is taken from the person by means of a technical device or photograph or film or other data medium or by technical processing obtained in another manner is processed and stored in the ABIS database. The biographical data of a person and the data concerning the taking and collection of a facial image are processed and stored in accordance with the provisions concerning the offence proceedings biometrics database.

(4) The offence proceedings biometrics database exchanges the data specified in subsections 2 and 3 of this section with the ABIS database via X-Road or in another manner which enables secure electronic data exchange.

(5) Data obtained upon analysis of a DNA sample and data relating to taking or collection thereof and biographical data of a person are processed and stored in accordance with the provisions concerning the offence proceedings biometrics database.

(6) Voice samples taken or otherwise obtained from a person and data relating to taking or collection thereof and biographical data of a person are processed and stored in accordance with the provisions concerning the offence proceedings biometrics database.

(7) The biographical data of a person provided in subsections 2, 3, 5 and 6 of this section which are entered in the offence proceedings biometrics database include the name, personal identification code and contact details of the person. The data relating to taking and collection of biometric data are the data of the performer of the operation and the time, place and legal basis for the performance of the operation.

(8) The controller of offence proceedings biometrics database is the Ministry of Justice and its processor is the Estonian Forensic Science Institute.

(9) The offence proceedings biometrics database is founded and its statutes are established by a regulation of the Government of the Republic.

§ 18. Entry of data in offence proceedings biometrics database and processing of such data

(1) Data are entered in the offence proceedings biometrics database only on the basis of law and for the purposes specified in law. The data entered in the database may be only used for the performance of the duties provided by law and in accordance with the purpose of processing and entry of data in the database.

(2) Upon identification and verification of the identity of a person for the purposes of § 15⁵ of the Identity Documents Act, the identity data of the person entered in the offence proceedings biometrics database may be processed.

(3) During dactyloscopic examination of a person and collection of friction ridge skin impressions collected at a crime scene or other object, the following is entered in the offence proceedings biometrics database:

- 1) the name, personal identification code and contact details of the person, where such data exist;
- 2) data concerning the crime scene or other object, where such data exist;
- 3) data concerning the taking of dactyloscopic data;
- 4) data concerning the operations conducted with dactyloscopic data.

(4) Upon taking of a facial image, the following is entered in the offence proceedings biometrics database:

- 1) the name, personal identification code and contact details of the person, where such data exist;
- 2) data concerning the crime scene or another place relating to the event, where such data exist;
- 3) data concerning taking of a facial image;
- 4) data concerning operations performed with a facial image.

(5) Upon taking a DNA sample, the following is entered in the offence proceedings biometrics database:

- 1) the name, personal identification code and contact details of the person, where such data exist;
- 2) data concerning the crime scene or other object, where such data exist;
- 3) data concerning collecting of a DNA sample;
- 4) data obtained by analysis of a DNA sample;
- 5) DNA sample code;
- 6) data concerning operations performed with a DNA sample.

(6) Upon taking a voice sample, the following is entered in the offence proceedings biometrics database:

- 1) the name, personal identification code and contact details of the person, where such data exist;
- 2) data concerning the crime scene or another place relating to the event, where such data exist;
- 3) data concerning taking of a voice sample;
- 4) voice sample;
- 5) data concerning operations performed with a voice sample.

§ 19. Access to offence proceedings biometrics database

- (1) Data entered in the offence proceedings biometrics database are not subject to disclosure.
- (2) The processor of the offence proceedings biometrics database has access to the data entered in the database and the processor uses the data for the performance of the duties imposed on the processor by law.
- (3) For the automated transmission of data and verification of the existence thereof in the offence proceedings biometrics database, access is granted to the Police and Border Guard Board, an investigative agency, an extra-judicial proceedings authority, a surveillance and security authority and a prison.
- (4) Data entered in the offence proceedings biometrics database are issued to:
 - 1) the Police and Border Guard Board, the Rescue Board, the Defence Forces, an investigative agency, a surveillance and security authority, an extra-judicial proceedings authority, a prosecutor's office, a court and a prison for the performance of the duties imposed on them by law;
 - 2) the person themselves on the basis of a written and signed application, unless otherwise provided by law.
- (5) Automated searches and comparisons are permitted in the offence proceedings biometrics database and the data are issued to a foreign competent authority on the basis of law, an international treaty approved by the Riigikogu or other international law binding on Estonia and only in the case the data are used in accordance with the provisions of subsection 1 of § 18 of this Act.
- (6) Data entered in the archives of the offence proceedings biometrics database are issued to:
 - 1) the person themselves on the basis of a signed application, unless otherwise provided by law;
 - 2) ensure the forensic examination commissioned in criminal proceedings in accordance with the rules provided in § 99² of the Code of Criminal Procedure;
 - 3) a security authority for the performance of the duties assigned to it by law.

§ 20. Entry of data obtained by dactyloscopic examination, taking of facial image and voice sample and DNA sample analysis in offence proceedings biometrics database and ABIS database based on person's application

- (1) A person may apply for their dactyloscopic examination, taking of a facial image or a voice sample or analysis of a DNA sample and the entry of the obtained data respectively in the offence proceedings biometrics database and the ABIS database. The application must be in writing and signed.
- (2) By their application, a person gives their consent to the processing of the data obtained by dactyloscopic examination, taking of a facial image or a voice sample or analysis of a DNA sample and determines the purpose of use of the data and the term for storage thereof.
- (3) A person whose data are entered in the offence proceedings biometrics database or the ABIS database in accordance with subsection 1 of this section may apply for deletion of their data from the database at any time or change the purpose of the data usage by submitting a written signed application to the processor of the database.
- (4) Data entered in the offence proceedings biometrics database on the basis of an application of a person are deleted at the time specified in subsection 2 of this section or on the basis of an application provided in subsection 3 of this section. Where the person has not set a term, the data are deleted after five years from the entry thereof in the database, unless otherwise provided by law.

§ 21. Storage of data entered in offence proceedings biometrics database and in ABIS database

- (1) The data obtained by dactyloscopic examination of a person, taking of a facial image or a voice sample and analysis of a DNA sample are stored in the offence proceedings biometrics database and the ABIS database for a maximum of 40 years, unless otherwise provided by law. After expiry of the specified term, the data are archived.
- (2) In the archives of the offence proceedings biometrics database and the ABIS database, the data obtained by dactyloscopic examination, taking of a facial image or a voice sample and analysis of a DNA sample of persons are stored for a maximum of 35 years.
- (3) Friction ridge skin impressions collected at a crime scene or from another object or from an unidentified deceased person and entered in the ABIS database and the data entered in the offence proceedings biometrics database concerning collection of friction ridge skin impressions are stored in the database until linking with a person after which the trace linked with a person is closed or, in the case of failure to link with a person, for a maximum of 75 years.
- (4) A facial image collected at a crime scene or obtained from elsewhere or taken from an unidentified deceased person and entered in the ABIS database and the data entered in the offence proceedings biometrics database concerning collection of a facial image are stored in the database and until linking with a person or for a maximum of 75 years.

(5) Voice samples collected at a crime scene or obtained from elsewhere and entered in the offence proceedings biometrics database and the data concerning the collection of a voice sample are stored in the database until linking with a person or for a maximum of 75 years.

(6) Data obtained from the analysis of a DNA sample collected at a crime scene or obtained from elsewhere, collected from a person but not relating to that person, obtained from an unidentified deceased person or personal items of a missing person or their close relatives and the data concerning the collection of a DNA sample are stored in the offence proceedings biometrics database until linking with a person or full identification of a person or for a maximum of 75 years.

(7) The provisions of § 20 of this Act apply to processing of the data of close relatives specified in subsection 6 of this section.

§ 22. Deletion of data entered in offence proceedings biometrics database and ABIS database

(1) Data entered in the offence proceedings biometrics database and the ABIS database are deleted after the expiry of the retention term or at another time provided by law.

(2) During dactyloscopic examination of a person or taking of a facial image, a voice sample or a DNA sample from a person for verification of identity or identification of the person, the data are deleted respectively from the offence proceedings biometrics database and the ABIS database immediately after verification of the identity or conduct of an identification study.

(3) Where a person is acquitted, the criminal proceedings are terminated on the basis of §§ 199 and 200 or §§ 205² and 274² of the Code of Criminal Procedure, unless the proceedings are continued as a misdemeanour, or the misdemeanour proceedings are terminated on the basis of clauses 1–3 and 5–7 of subsection 1 of § 29 of the Code of Misdemeanour Procedure, the data obtained by dactyloscopic examination of the person, taking of a facial image or a voice sample and analysis of a DNA sample are deleted respectively from the offence proceedings biometrics database and the ABIS database on the basis of a court judgment or a ruling of a prosecutor's office, an investigative body or an extra-judicial proceedings authority within 14 days as of receipt thereof.

(4) Friction ridge skin impressions, a facial image, a voice sample or the data obtained by analysis of a DNA sample which have been entered in error respectively in the offence proceedings biometrics database and the ABIS database or for technical testing or for the purpose of quality control or contamination control are deleted from the database immediately after the discovery of the error or the testing or control.

(5) A DNA sample of a person is destroyed two months after the submission of the respective expert report to the proceedings authority or entry of the data obtained from the analysis of the DNA sample in the offence proceedings biometrics database. In justified cases, the term for storing of a DNA sample can be extended at the request of a prosecutor's office until the termination of the criminal proceedings.

§ 23. Use of ABIS database at forensic institution

(1) The ABIS database is an electronic database the purpose of which for the purposes of this Act is:

- 1) processing of friction ridge skin impressions obtained by dactyloscopic examination from a person who works at a forensic institution and is in contact with the object or material of examination in order to exclude the traces left by that employee from the object of the examination;
- 2) processing of biometric data entered in the database on the basis of an application of a person and for the specified purpose.

(2) The provisions of § 15⁵ of the Identity Documents Act with the specific rules provided in this Act apply to the processing of data entered in the ABIS database.

(3) Biometric data obtained by dactyloscopic examination of a person who works at the forensic institution and is in contact with the object or material of examination and the biometric data entered in the ABIS database on the basis of an application of a person and for the specified purpose may be processed only for the purpose specified in subsection 1 of § 36 and subsection 2 of § 20 of this Act.

(4) The ABIS database is established and its statutes are approved by a regulation of the Government of the Republic.

(5) The controllers of the ABIS database are the Police and Border Guard Board and the Estonian Forensic Science Institute.

(6) The data in the ABIS database have restriction on access and have been declared information intended for internal use.

Chapter 4

Registered Private Expert

§ 24. Registered private expert

A registered private expert is a natural person who complies with the requirements for a private expert and is included in the respective list.

§ 25. List of registered private experts

(1) The purpose of compiling a list of registered private experts (hereinafter *list*) is to provide an overview of experts who can be used by a proceedings authority for conducting examinations.

(2) A registered private expert is entered in the list according to the type of examination.

(3) The list is maintained by the forensic institution. The list is published on the website of the forensic institution. The published list has an informative meaning.

(4) The rules for maintaining the list are established by a regulation of the minister in charge of the policy sector.

§ 26. Entry of private expert in list

(1) A person is entered in the list, provided the person:

- 1) complies with the requirements for forensic experts provided in clauses 1–5 of subsection 1 and subsections 2–5 of § 7 of this Act;
- 2) has the qualifications necessary for conducting of an examination and has worked for at least three years in a speciality close to the type of examination applied for;
- 3) holds an activity licence or a valid licence or professional certificate required for pursuing a regulated profession;
- 4) has the opportunity to use the means necessary for conducting an examination.

(2) A person is not entered in the list where the person:

- 1) is employed as a forensic expert at the forensic institution;
- 2) has previously been deleted from the list on the basis of clause 5 of subsection 1 or clauses 1–3 or 5 of subsection 2 of § 31 of this Act.

(3) Persons are entered in the list of the type of examination in which it is customary to commission examinations and which are not carried out at the forensic institution.

§ 27. Application

(1) A person is entered in the list on the basis of the person's application.

(2) An application is submitted to the forensic institution.

(3) The formal requirements for applications and the composition of the data contained therein and the content of the annexes thereto are established by a regulation of the minister in charge of the policy sector.

(4) A registered private expert is required to immediately notify the forensic institution in writing of any changes in the data contained in the application and its annexes.

§ 28. Examination of application and deciding on entry in list

(1) On the basis of an application and submitted documents, the forensic institution verifies the compliance of a person with the requirements established for private experts in this Act. The forensic institution may request additional documents from an applicant.

(2) The head of the forensic institution decides on the entry of a person in the list within two months as of the receipt of an application. Where additional documents specified in § 1 of this Act are requested, the forensic institution may extend the term for up to three months.

(3) The rules for examination of applications and deciding on the entry in the list are established by a regulation of the minister in charge of the policy sector.

§ 29. Oath of registered private expert

(1) Prior to entry in the list, a person takes the following oath in front of the head of the forensic institution:

“I, (name), swear to perform the duties of a registered private expert with honesty and to provide expert opinions impartially, according to my specific knowledge and conscience. I am aware of the rights and obligations of an

expert provided by law, as well as the fact that a penalty is imposed in accordance with the provisions of § 321 of the Penal Code for providing a knowingly incorrect expert opinion.

(2) The oath is signed digitally or by hand. The oath text is kept in the expertise institution.

(3) Upon extension of the term of validity, no new oath is taken. Where a person is removed from the list, the oath becomes invalid.

§ 30. Validity period of entry in list

(1) A person is entered in the list for three years.

(2) An entry in the list expires on 15 December of the third year of being on the list regardless of the date of making the entry.

(3) On the basis of an application of a registered private expert, the term of validity specified in subsection 2 of this section may be extended repeatedly where the person complies with the requirements specified in § 26 of this Act concerning which the registered private expert gives a confirmation in the application for the extension of the entry.

(4) An application for the extension of the term of an entry in the list has to be submitted to a forensic institution not later than three months prior to the expiry of the term of validity.

(5) An application for the extension is accompanied by the records specified in subsection 1 of § 35 of this Act concerning proceedings in which the person conducted an examination as a registered private expert during the last three years.

(6) A decision on the extension of the term of an entry in the list is made in accordance with the rules provided in § 28 of this Act.

§ 31. Removal from list of registered private experts

(1) A registered private expert is removed from the list where:

- 1) the person submits a written application to the forensic institution for removal from the list;
- 2) the period of validity of an entry in the list expires and no application for the extension thereof has been submitted;
- 3) the application for the extension of the term of validity of an entry in the list is not satisfied;
- 4) it becomes evident that the person does not comply with the requirements provided in § 26 of this Act;
- 5) the registered private expert has violated the oath established in § 29 of this Act;
- 6) the registered private expert dies.

(2) A registered private expert may be removed from the list where:

- 1) the registered private expert refuses to conduct an examination without legal basis or delays the conduct of an examination without good reasons or does not appear at the invitation of a proceedings authority and the proceedings authority makes a reasoned proposal to the forensic institution to remove the person from the list;
- 2) a proceedings authority has repeatedly forwarded claims or complaints to the forensic institution concerning the activities of the registered private expert;
- 3) the person uses the name of the registered private expert when providing an opinion outside proceedings;
- 4) the registered private expert has not conducted an examination in proceedings during three years;
- 5) the registered private expert has not submitted to the forensic institution the expert reports made in proceedings together with the examination ruling.

(3) The rules for removal of a registered private expert from the list are established by a regulation of the minister in charge of the policy sector.

(4) Removal of a registered private expert from the list does not prevent the completion of an ongoing examination.

Chapter 5 Expert's Rights and Obligations

§ 32. Grounds for arise of expert's rights and obligations

(1) Rights and obligations arise to a forensic expert in proceedings on the basis of an examination ruling or on the basis of another document drawn up as an examination task. Where only the forensic institution has

been commissioned, the rights and obligations of an expert arise upon receipt of the examination ruling or examination task.

(2) Rights and obligations of a registered private expert or another person commissioned as an expert arise in proceedings on the basis of an examination ruling of a proceedings authority.

(3) Upon conduct of an examination for charge, the rights and obligations of a forensic expert arise upon entry into a contract.

§ 33. Expert's rights and obligations

(1) The rights and obligations of an expert upon conduct of an examination or a study to be drawn up as an independent expert opinion specified in subsection 3 of § 2 of this Act are provided by procedural laws or other laws. The rights and obligations of an expert upon conduct of an examination for charge are provided in § 12 of this Act.

(2) An expert has the right to use auxiliary staff in the conduct of an examination and a study.

(3) The auxiliary staff working at the forensic institution who are in direct contact with the examination materials comply with the requirements provided in clauses 1 and 2 of subsection 3 and subsections 4 and 5 of § 7 of this Act.

(4) In addition to the provisions of procedural laws, an expert is required to:

- 1) supervise and monitor the activities of the auxiliary staff when conducting an examination;
- 2) store the examination data in accordance with the provisions of § 35 of this Act;
- 3) in the case of an examination conducted by a contracting partner of the forensic institution, submit the expert report and its annexes to the forensic institution electronically within ten working days as of the completion of the expert report.

§ 34. Obligation to maintain data confidentiality

An expert and the auxiliary staff may not disclose any circumstances and data which became known to them in connection with the conduct of an examinations or a study, including any personal data and data concerning relationships between persons. The obligation to maintain confidentiality has an unspecified term.

§ 35. Obligation to preserve data

(1) A registered private expert and a contracting partner of the forensic institution must keep a record of the examinations conducted and retain as records:

- 1) the name of the proceedings authority which commissioned the examination;
- 2) the number of the proceedings;
- 3) the date of the examination ruling;
- 4) the type of examination;
- 5) the date of drawing up of an expert report or a report on refusal to conduct an examination;
- 6) the date of sending the expert report and its annexes to the forensic institution.

(2) A registered private expert and a contracting partner of the forensic institution are required to preserve records for seven years as of the conduct an examination.

(3) Records of examinations conducted at the forensic institution and an expert report or a report on refusal to conduct an examination are stored at the forensic institution in accordance with the rules provided by law or on the basis of law.

§ 36. Dactyloscopic examination of and collecting DNA samples from person working at state forensic institution

(1) A person working at a forensic institution who is in contact with the object or material of examination is subjected to dactyloscopic examination and a DNA sample is taken from them with the aim of excluding any traces left by them on objects.

(2) By dactyloscopic examination, fingerprints of both hands and palm prints and writer's palm prints are taken from any employee of a forensic institution.

(3) Friction ridge skin impressions taken by dactyloscopic examination of an employee of a forensic institution are entered in the ABIS database. The data obtained from the analysis of a DNA sample taken from an employee of the forensic institution and the biographical data of an employee in pseudonymized form and the data concerning dactyloscopic examination of the employee and taking of a DNA sample from the employee are entered in the offence proceedings biometrics database.

(4) The data received by dactyloscopic examination and a DNA sample analysis of an employee of a forensic institution are removed respectively from the biometrics database and ABIS database when three years have passed from expiry of the employment contract entered into by the person and the forensic institution.

(5) The list of places of employment of a forensic institution where persons employed are subjected to dactyloscopic examination and where DNA samples are taken from them, and the rules for dactyloscopic examination and taking of DNA samples, entry in the database and removal from the database are established by a directive of the head of the forensic institution.

Chapter 6

Price and Financing of Examination

§ 37. Calculation of examination costs

(1) Examination costs include costs incurred by an expert or forensic institution in connection with an examination and a study and participation in proceedings and, in justified cases, costs incurred by a non-party in connection with the examination.

(2) Calculation of examination costs must be understandable, correct, detailed and consistent.

(3) Where an expert refuses to conduct an examination on the basis provided by law or an examination task is cancelled, the expert submits information concerning the costs already incurred to the proceedings authority which commissioned the examination. The proceedings authority assesses the reasonableness of the costs incurred and the circumstances of refusal to conduct an examination, and thereafter determines the amount to be compensated for or refuses to compensate for the costs of the examination.

§ 38. Price and financing of examination and study conducted at forensic institution and its contracting partner

(1) The setting of prices of examinations and studies conducted at an expert institution and its contracting partner are based on the examination costs provided in subsections 1 and 2 of § 37 of this Act. The price of an examination conducted at a forensic institution and at its contracting partner may not be higher than the amounts provided in subsection 5 of § 178 of the Code of Criminal Procedure, subsection 2 of § 38 of the Code of Misdemeanour Procedure and subsection 3 of § 152, subsections 1 and 3 of § 153 and § 157 of the Code of Civil Procedure for an expert who is not employed by the forensic institution.

(2) The Government of the Republic establishes the prices specified in subsection 1 of this section by a regulation.

(3) The price of an examination conducted at a forensic institution or its contracting partner is formed based on the type of examination depending on the following:

- 1) number of persons studied;
- 2) number of samples studied;
- 3) number of objects studied;
- 4) volume of data studied;
- 5) number of methods used;
- 6) complexity and extent of the examination;
- 7) number of studies conducted;
- 8) number of studies ordered from outside the forensic institution;
- 9) number of experts engaged in a committee of experts from outside the forensic institution and the remuneration paid to them;
- 10) translation costs.

(4) An expert adds the price of an examination to an expert report.

(5) Depending on the particular complexity or extent of an examination, the price of the examination may be increased up to three times. The price of the examination may be reduced where necessary. An increase or decrease in the price of the examination must be justified.

(6) No value added tax is added to the price of an examination.

(7) The conduct of an examination at a forensic institution is financed from the state budget, unless otherwise provided by law.

§ 39. Price and financing of examination for charge

(1) A requesting person pays a fee to the forensic institution for an examination for charge in accordance with the provisions of § 38 of this Act. The price of an examination for charge may be increased by agreement with the requesting person depending on the particular complexity and extent of the examination or in other justified cases.

(2) Where no price has been determined for a type of examination for charge, the price for the closest type of examination is used as the basis when agreeing on the charge.

(3) A requesting person pays the full fee prior to the commencement of an examination for charge, unless otherwise agreed.

§ 40. Payment for examination and study conducted outside forensic institution and to expert to be engaged

(1) The forensic institution pays:

1) for a study ordered from outside the forensic institution in the course of an examination conducted at a forensic institution;

2) for an examination ordered in criminal proceedings from a foreign forensic or another institution on the basis of subsection 1 of § 14 of this Act;

3) to an expert engaged in criminal proceedings from outside the forensic institution as a member of a committee of experts.

(2) An expert engaged as a member of a committee of experts from outside the forensic institution is paid according to their contribution to the examination.

(3) The amount of the remuneration of an expert engaged as a member of a committee of experts from outside the forensic institution and the bases for the payment thereof are determined by agreement with the proceedings authority and the expert.

(4) In civil proceedings and administrative proceedings, an evaluation ordered from a foreign forensic or another institution or an expert engaged from outside the forensic institution as a member of a committee of experts is paid by the court as the person ordering the examination.

(5) Where a forensic institution does not consider the petition of a proceedings authority to request an examination in criminal proceedings from a foreign forensic or other institution or to engage an expert from outside the forensic institution in a committee of experts possible due to the high price of the examination or for another good reason, the head of the forensic institution informs thereof the Prosecutor General who decides on the requesting of an examination or engagement of an expert and payment for it and inform the minister in charge of the policy sector thereof.

§ 41. Cost of examination and study conducted for foreign state

A fee is charged for an examination and a study conducted for a foreign state by agreement with the requesting person, taking account of the provisions of § 37 of this Act.

§ 42. Reimbursement of expenses incurred by registered private expert and another person appointed as expert

Expenses relating to examinations conducted by a registered private expert and another person appointed as an expert by a proceedings authority are compensated for in accordance with the rules provided by procedural laws.

§ 43. Compensation of non-party for costs incurred in connection with conduct of examination

(1) Direct costs incurred by a non-party in connection with an examination are compensated for in a justified case, unless such costs are already covered by the fees paid to the expert. Such costs include the costs of the use of devices in possession of the person which were incurred only upon conduct of the examination, including costs incurred on transportation, auxiliary staff and materials and devices used for the study.

(2) Examination costs of a non-party do not include salaries of an expert or other costs relating to them.

(3) At the demand of a proceedings authority, a non-party must submit documents certifying the costs of the examination and provide explanations.

(4) The amount to be compensated for to a non-party is determined on the basis of the documents submitted.

(5) A proceedings authority transfers the amount to be compensated for to a bank account specified by the person within 15 working days.

Chapter 7 Implementing Provisions

§ 44. Transformation of officially certified experts into registered private experts

(1) Within one month as of the entry into force of this Act, the forensic institution notifies all experts entered in the list of officially certified experts of the changes and requests to notify the forensic institution within one

month, in a form reproducible in writing, of their wish to be removed from the list or of their consent to continue as a registered private expert until the expiry of the period of validity of the official certification. The list of registered private experts is published on the website of the forensic institution within two months as of the entry into force of this Act.

(2) Officially certified experts from whom the forensic institution fails to obtain a response or who communicated the consent provided in subsection 1 of this section to the forensic institution but who are entered in the list of types of examinations which are conducted at the forensic institution are removed from the list of registered private experts upon expiry of one year as of the entry into force of this Act, regardless of the term of validity of the official certification.

§ 45. Processing of data entered in national fingerprint database before 1 September 2023

(1) The data entered in the national fingerprint database before 1 September 2023 concerning a person and taking of dactyloscopic data are deemed to be part of the offence proceedings biometric database upon entry into force of this Act.

(2) The card catalogue of national fingerprint register which was part of the national fingerprints register before 1 September 2023 and the card catalogue of traces from crime scenes remain at the forensic institution and are archived and destroyed when the retention period provided in § 21 of this Act expires.

(3) Until the completion of the technical solution, the card catalogue of fingerprints and the card catalogue of traces from crime scenes specified in subsection 2 of this section may be maintained at the forensic institution even after 1 September 2023.

§ 46.–§ 47.[The provisions amending other Acts omitted from translation.]

§ 48. Repeal of Forensic Examination Act

The Forensic Examination Act (RT I 2001, 53, 309) is repealed.

§ 49.–§ 59.[The provisions amending other Acts omitted from translation.]

§ 60. Entry into force of Act

(1) This Act enters into force on 1 September 2023.

(2) Section 46, clauses 8–11, 13, 16–23 and 26 of § 50 and clauses 3–6 and 9 of § 59 of this Act enter into force on 1 May 2023.

Jüri Ratas
President of the Riigikogu