



Canadian Association of Chiefs of Police  
Association canadienne des chefs de police

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Presentation to the Standing Senate Committee on  
Legal and Constitutional Affairs

**S-231** - An Act to amend the Criminal Code, the Criminal Records Act,  
the National Defence Act and the DNA Identification Act

Remarks by:

**Superintendent Andrew Chan**

(Member of the CACP Law Amendments Committee  
and the Vancouver Police Department)

**Acting Detective Sergeant Stephen Smith**

(Toronto Police Service, Homicide - Cold Case Squad)

Representing:

**Canadian Association of Chiefs of Police**

November 23, 2023

Distinguished members of this Committee, on behalf of Chief Danny Smyth, President of the Canadian Association of Chiefs of Police, I am pleased to be given the opportunity to meet with you today.

I am a member of the CACP Law Amendments Committee, who I represent here today, and I am joined by Acting Detective Sergeant Stephen Smith, a member of the Toronto Police Homicide – Cold Case Squad.

## **Introduction**

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We welcome the opportunity to speak to you about Bill S-231. We have also prepared a written submission we hope you have had an opportunity to review. For more than two decades, the National DNA Databank has been an important tool for law enforcement, and we see Bill S-231 as an opportunity to make the databank more effective.

After briefly outlining our support for key provisions of the Bill, we will propose some further amendments.

## **Expanding the Convicted Offenders Index**

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The collection and use of DNA profiles protects society and the administration of justice by facilitating the early detection, arrest, and conviction of criminal offenders. It also streamlines investigations and protects the innocent by eliminating suspects and exonerating the wrongly convicted.

Other countries and American states have expanded their DNA database regimes to include all the offences that we would refer to as indictable or hybrid offences while Canada's list continues to be restrictive.

The CACP supports making a primary designated offence any offence under the *Criminal Code* and other federal statutes that is punishable on indictment by five years or more and a secondary designated offence as any indictable offence that is punishable by less than five years of imprisonment, including summary conviction offences that may also be prosecuted by indictment.

This critical change will expand the overall utility of the National DNA Databank. We believe that this can be done in a manner that respects *Charter* obligations, *Youth Criminal Justice Act* principles, while striking an appropriate balance between individual rights and public safety.

## **Familial DNA Comparisons**

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Advances in DNA technology have allowed police agencies to take unknown samples from crime scenes and find potential family members of suspects by looking for hereditary markers.

Bill S-231 would amend the *DNA Identification Act* to allow a search to determine whether a DNA profile submitted for comparison could be that of a biological relative of a person whose DNA profile is in the various DNA Indices.

The CACP supports this amendment in principle.

### **Making the DNA Sample Process More Efficient**

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The CACP supports the efficiency created in the proposed amendment that would allow a peace officer to forgo the taking of a DNA sample when satisfied that the person's DNA is already in the Convicted Offenders Index

### **Proposed Further Amendments**

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#### ***Seeking a DNA Order After the Sentencing Hearing***

DNA orders for both primary and secondary designated offences should be made at sentencing for both primary and secondary offences to simplify the procedure and ensure consistency.

As it relates to proposed further amendments, the proposed section 487.053(3) of the *Criminal Code* would allow the court to make a DNA order to be fulfilled within 90 days after conclusion of court proceedings in certain circumstances. The CACP respectfully submits that the ability for the Crown to seek a DNA order post sentencing hearing should not be time limited or the Crown should be given the opportunity to seek leave of the Court to extend the time for seeking a DNA order in the appropriate circumstances.

#### ***Prescribing the Date, Time and Place for the Taking of Bodily Samples***

Section 487.051(4) permits the court to make an order authorizing the taking of bodily samples and requiring the offender to report at the place, day, and time set out in the order.

The CACP submits that the offender and the police should be able to agree on a given time and date or reschedule the taking of DNA samples in appropriate circumstances within a given time frame. This would be particularly useful in rural and northern regions.

### ***Conducting a Familial DNA Comparison***

The CACP submits that familial DNA comparisons, as proposed in section 6.41(1) of the *DNA Identification Act*, should not include the victims index and voluntary donors index as this may have unintended consequences for obtaining DNA samples from those donors.

Finally, the proposed section 6.41(2) of that *Act* provides that the Commissioner may conduct a familial DNA Comparison under certain circumstances.

The CACP submits that the word “may” should be replaced with “shall” and that the familial DNA comparison should be mandatory so long as the Commissioner is satisfied that the preconditions listed within the Bill have been met.

### **Conclusion**

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Overall, the CACP supports Bill S-231 and we believe it will enhance safety and security for all Canadians. In closing, we would like to thank the Honourable Senator Carignan and his staff for drafting a Bill that strives to modernize the National DNA Databank and the investigative use of DNA.