

On forensic science activity in the Republic of Kazakhstan

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan dated 20 January 2010 No. 240-IV.

U n o f f i c i a l t r a n s l a t i o n

Footnote. The Law of the Republic of Kazakhstan dated 10.02.2017 No. 44-VI (enforced upon expiry of ten calendar days after the day of its first official publication) expired.

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Note of RCLII!

The order of enforcement of the Law of the Republic of Kazakhstan, see Art. 51

This Law regulates social relations for carrying out forensic science activity in the Republic of Kazakhstan.

The procedure for appointment and conduct of a forensic examination shall be established by the Criminal Procedure Code, the Civil Procedure Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences

Chapter 1. GENERAL PROVISIONS

1. Basic definitions

The following basic definitions are used in this Law:

1) special scientific knowledge - is the area of ?? special knowledge, the content of which includes a scientific knowledge, realized in methods of forensic science research ;

2) expert opinion- is a document drawn up in accordance with the requirements of the laws of the Republic of Kazakhstan and reflecting the progress and findings of forensic science research;

3) forensic science activity – is an activity of forensic examination bodies and forensic experts on the organization and conduct of a forensic examination;

4) a license for carrying out forensic science activity– is a permit issued to an individual by the Ministry of Justice of the Republic of Kazakhstan or authorized body in the field of health care of the Republic of Kazakhstan for carrying out forensic science activity;

5) methodology for forensic science research –is the system of methods, used in the study of objects of a forensic examination in order to establish the circumstances, relating to the subject of a certain kind, the type of a forensic examination;

6) a method of forensic science research–is a system of logical and (or) the instrumental operations (means, techniques) used in the study of the objects of the forensic examination in order to establish the circumstances relating to the subject of the forensic examination;

7) a forensic examination–is a study of materials of criminal and civil cases or case on administrative offence conducted on the basis of special scientific knowledge in order to establish the circumstances relevant to its resolution;

8) a subject of a forensic examination – is the circumstances, relevant to the resolution of criminal, civil cases or case on administrative offence established on the basis of conducting the forensic examination;

9) objects of a forensic examination–are physical evidences, documents, body and condition of the human psyche, corpses, animals, samples, and information related to the subject of the forensic examination contained in the materials of the case over which the forensic examination is being conducted;

10) forensic examination bodies – are state legal entities carrying out forensic science activity according to the procedure provided by the laws of the Republic of Kazakhstan;

11) a head of a forensic examination body – is a person carrying out management of forensic science activity of the forensic examination body (the first head of the forensic examination body, the head of the territorial division of the forensic examination body);

12) a forensic expert – is the person, who meets the requirements of this Law, who was entrusted to conduct a forensic examination by the body (person) conducting criminal proceeding, the court or body (official) authorized to consider cases on administrative offences, prosecutor, notary according to the procedure provided by the laws of the Republic of Kazakhstan;

13) specialty of a forensic expert – is a scientific competence of the forensic expert in the field of conduct of a certain kind of forensic examination established by the legislation of the Republic of Kazakhstan;

14) samples–are the objects of the material world displaying the characteristics of a living person, corpse, animal, substance, subject, necessary for conducting forensic science research and giving an expert opinion.

Footnote. Article 1 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

2. Legislation of the Republic of Kazakhstan on forensic science activity

1. The legislation of the Republic of Kazakhstan on forensic science activity is based on the Constitution of the Republic of Kazakhstan, is composed of the Criminal Procedure and Civil Procedure Codes of the Republic of Kazakhstan, the Code of the Republic of Kazakhstan on Administrative Offences, this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in this Law, the rules of the international treaty shall be applied.

3. The content of forensic science activity

The content of forensic science activity includes:

- 1) conduct of a forensic examination in criminal, civil cases and cases on administrative offences;
- 2) scientific research in the field of a forensic examination;
- 3) scientific-methodological and information support of a forensic examination;
- 4) recruitment, professional training and improvement of qualification of forensic experts.

4. The task of forensic science activity

The task of forensic science activity is ensuring proceedings in criminal and civil cases, and in cases on administrative offenses by the results of applying special scientific knowledge.

Footnote. Article 4 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

5. Principles of forensic science activity

Forensic science activity is based on the following principles:

- 1) legality;
- 2) respect for the rights, freedoms and legitimate interests of a human and a citizen, and the rights and legitimate interests of a legal entity;
- 3) independence of a forensic expert;
- 4) admissibility of the use of scientific and technological means and methods when conducting forensic science research;
- 5) comprehensiveness, completeness and objectivity of forensic science research;
- 6) compliance with professional ethics of a forensic expert.

6. Legality when carrying out forensic science activity

Forensic science activity shall be carried out under the condition of accurate fulfillment of the requirements of the Constitution of the Republic of Kazakhstan and other regulatory legal acts that form a legal basis of this activity.

7. Respect for the rights, freedoms and legitimate interests of a human and a citizen, and rights and legal interests of a legal entity when carrying out forensic science activity

1. Forensic science activity shall be carried out while respecting the rights, freedoms and legitimate interests of a human and a citizen, and the rights and legitimate interests of a legal entity in accordance with the Constitution, laws of the Republic of Kazakhstan and generally recognized principles and norms of international law.

2. Forensic science research, requiring a temporary restriction of the rights and freedoms of a person shall be carried out only on the grounds and according to the procedure provided by the law.

3. The person, who believes that the actions (inaction) of a forensic examination body or a forensic expert have resulted in the restriction of the rights, freedoms and legitimate interests of a human and a citizen or the rights and legitimate interests of a legal entity shall have the right to appeal against such actions (inaction) according to the procedure provided by the law.

8. The independence of a forensic expert

1. When conducting a forensic examination, a forensic expert is procedurally self-sufficient, independent from the body (person) that appointed the forensic examination, from a head of the forensic examination body and other persons.

2. A forensic expert shall give an opinion based on the findings of the research conducted. In addition, he/she shall be independent in the choice of means and methods of the research, the admissibility of which shall be determined by the laws of the Republic of Kazakhstan.

3. Unlawful influence on forensic expert and impeding his/her lawful activities shall be unacceptable and punishable under the law.

Footnote. Article 8 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

9. Admissibility of the use of means and methods of conducting forensic science research

During the conduct of forensic science research the usage of scientific-technical means and methods shall be allowed, if they are:

- 1) expressly provided by the laws of the Republic of Kazakhstan or not contrary to its norms and principles;
- 2) scientific wealthy;
- 3) ensure the efficiency of the proceedings in the case;
- 4) safe.

Footnote. Article 9 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

10. Comprehensiveness, completeness and objectivity of forensic science research

1. During a forensic examination a forensic expert shall be obliged to take all measures for the comprehensive, complete and objective research of objects based on his/her special scientific knowledge.

2. The opinion of a forensic expert shall be based on the provisions that make it possible to check the reasonableness and accuracy of the conclusions reached on the basis of generally accepted scientific and practical data.

11. Compliance with professional ethics of a forensic expert

During the conduct of forensic science research the norms of professional ethics of a forensic expert shall be observed.

Chapter 2. SUBJECTS OF FORENSIC SCIENCE ACTIVITY

12. Professional and qualification requirements imposed on a forensic expert

1. A forensic expert shall have special scientific knowledge.

2. Conduct of a forensic examination may be assigned to:

- employees of forensic examination bodies;
- 2) individuals carrying out forensic science activity under the license;
- 3) other persons on onetime basis in the cases provided for in paragraph 3 of this Article.

3. Conduct of a forensic examination on onetime basis may be assigned in the following cases:

1) appointment of the forensic examination not provided by the list of types of forensic examinations established by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of healthcare;

2) satisfaction of the substantiated motion of a participant of the criminal, civil proceedings, body (official) authorized to consider cases on administrative offenses, a participant of the proceedings on a case on administrative offense regarding engagement as an expert of a person who is not an employee of the forensic examination bodies or performing forensic science activities under a license in accordance with the laws of the Republic of Kazakhstan;

3) satisfaction of the disqualification to all forensic experts of the relevant specialty who are employees of forensic examination bodies and conducting forensic science activity on the basis of a license, or a substantiated suspension from the conduct of a forensic examination of the forensic examination body as a whole.

4) engagement of a forensic expert of a foreign country in accordance with Article 49 of this Law;

4. The persons referred to in sub-paragraphs 1) and 2) of paragraph 2 and in sub-paragraphs 1), 2), and 3) of paragraph 3 of this Law shall have a higher education.

5. The persons referred to in sub-paragraphs 1) and 2) of paragraph 2 of this Article shall have a qualification of a forensic expert confirmed by the certificate of qualification for the right to conduct a certain kind of forensic examination, to be attested by the commissions of the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care and be listed in State register of forensic experts of the Republic of Kazakhstan.

6. The position of a forensic expert in forensic examination bodies may be taken up by a citizen of the Republic of Kazakhstan, who meets the requirements set out in paragraphs 1, 4 and 5 of this Article.

7. Persons, who start working in forensic examination bodies for the first time, shall undertake special professional training that ends with undertaking of the qualification exam. The procedure for undertaking special professional training shall be established by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

8. A forensic expert cannot be a person who is recognized by the court as incapable or partially capable or has unspent or unexpunged convictions.

Within three years from the date of the relevant legal fact a forensic expert cannot be a person:

1) whose conviction has not been removed or expunged according to the procedure provided for by the law;

2) released from criminal liability on non-rehabilitating grounds for committing an intentional crime;

3) dismissed from state service, prosecution bodies, other law enforcement bodies, courts, forensic examination bodies for negative reasons;

4) deprived of the license for carrying out forensic science activity;

5) a license for carrying out forensic science activity has been terminated on the grounds provided for in paragraph 3 of Article 16 of this Law.

Footnote. Article 12 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

13. Assignment of the qualification of a forensic expert

1. Assignment of the qualification of a forensic expert shall be carried out by passing the qualification exam by them with the issuance of a certificate of qualification of the forensic expert for the right to conduct a certain kind of forensic examination.

2. A qualification exam shall be conducted and a certificate of qualification of the forensic expert for the right to conduct a certain kind of forensic examination shall be issued by qualification commissions of the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

3. The operating procedures and composition of the qualification commissions, as well as the procedure for conduct of qualification exams for assignment of the qualification of a forensic expert shall be determined by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

Footnote. Article 13 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

14. Attestation of a forensic expert

1. The forensic experts, who are employees of forensic examination bodies, as well as individuals carrying out forensic science activity on the basis of the license for carrying out forensic science activity shall be attested every five years by attestation commissions of the Ministry of Justice of the Republic of Kazakhstan or authorized body in the field of health care for the purpose of determining their level of professional training.

If there is reasonable doubt as to the appropriate level of professional training of the forensic expert, his/her extraordinary attestation shall be carried out.

2. The operating procedures and composition of attestation commissions as well as the procedure for conducting attestation of a forensic expert, including the extraordinary one, shall be determined by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

Footnote. Article 14 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

15. The procedure and conditions for the issuance, refusal to issue a license for carrying out forensic science activity

1. A license for carrying out forensic science activity is issued to individuals.

2. A license for carrying out forensic science activity is a general one.

3. The procedure and conditions for the issuance, refusal to issue a license for carrying out forensic science activity shall be established by the legislation of the Republic of Kazakhstan on licensing.

4. The operating procedure and composition of a commission on licensing of forensic science activity shall be established by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

Footnote. Article 15 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

16. Suspension, termination and renewal of a license for carrying out forensic science activity

1. The procedure, grounds and conditions for suspension, renewal, termination and deprivation of a license for carrying out forensic science activity shall be established by the legislation of the Republic of Kazakhstan on licensing.

2. Apart from the general grounds provided by the legislation of the Republic of Kazakhstan on licensing, a license for carrying out forensic science activity of an individual shall be suspended for the period of:

1) being on the public service;

2) performance of his/her authorities as the member of Parliament of the Republic of Kazakhstan, the member of the maslikhat, carrying his/her activities on a continuous or exempt basis paid from the state budget;

3) work as an expert in forensic examination bodies;

4) doing compulsory military service.

3. Apart from the general grounds provided by the legislation of the Republic of Kazakhstan on licensing, the termination of a license for carrying out forensic science activity of an individual shall be carried out by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care in cases of:

recognition of the person by a judgment of a court that has entered into legal force as incapable or partially capable, dead or missing;

the person's loss of the citizenship of the Republic of Kazakhstan;

exemption of the person from criminal liability on non-rehabilitating grounds for committing an intentional crime;

the entry into force of a judgment of conviction against the person.

4. Apart from the general grounds provided by the legislation of the Republic of Kazakhstan on licensing, the termination of a license for carrying out forensic science activity of an individual shall be carried out through the court at the suit of the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care in cases of:

gross or repeated violation of the legislation of the Republic of Kazakhstan when carrying out forensic science activity;

inability of the person to perform the duties of the forensic expert due to insufficient level of professional training confirmed by the results of his/her attestation; evasion of the person from being attested.

In the specified cases, the commission on licensing of forensic science activity at the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care shall approach to the head of the licensing body with the submission regarding preparation of a statement of claim on deprivation of the license for carrying out forensic science activity.

The deprivation of the license for carrying out forensic science activity shall entail termination of its validity.

5. A license shall be suspended, renewed and terminated by the order of the head of the licensing body on the basis of materials submitted by the commission on licensing of forensic science activity at the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care, except for the cases specified in paragraph 4 of this Article.

The individual whose license is suspended, renewed or terminated shall be notified about the decision within three days, and relevant information shall be entered, within five days, in the State Register of forensic experts of the Republic of Kazakhstan.

Footnote. Article 16 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

17. State register of forensic experts of the Republic of Kazakhstan

1. Information about the forensic experts who are employees of forensic examination bodies, as well as about individuals who have a license for carrying out forensic science activity shall be entered into the State register of forensic experts of the Republic of Kazakhstan, objectives and procedure for the formation and use of which shall be established by the Government of the Republic of Kazakhstan.

2. The body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, shall entrust its conduct to the expert, whose details were entered in the State register of forensic experts of the Republic of Kazakhstan, except in cases provided for in paragraph 3 of Article 12 of this Law.

Footnote. Article 17 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

18. Rights of a forensic expert

1. A forensic expert shall have the right to:

1) become familiar with the materials of the case relating to the subject of a forensic examination;

2) file a motion on provision to him/her with additional materials required to give an opinion;

3) participate in the performance of the procedural actions and in court session with the permission of the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, and ask the participants concerned about the questions related to the subject of the forensic examination;

4) become familiar with the transcript of the procedural act, in which he/she took part, as well as in the corresponding part with the transcript of a court session and make observations to be included in it regarding the completeness and correctness of fixation of his/her actions and statements;

5) as agreed with the body that appointed the examination, give an opinion within his/her competence on the circumstances identified during the forensic examination that are relevant to the case and beyond the scope of the issues contained in the resolution, ruling on the appointment of the forensic examination;

6) provide an opinion and testify in native language or the language he/she speaks; use free assistance of an interpreter, challenge him/her;

7) file complaints to the actions of the body conducting the criminal proceeding, the court, the body (official), where the case on administrative offence is pending, and other persons involved in the proceedings that infringe his/her rights when conducting a forensic examination;

8) receive reimbursement of the expenses incurred when conducting a forensic examination and remuneration for the work performed, if the conduct of the forensic examination is not a part of his/her official duties.

The forensic expert shall also have other rights provided by the law.

2. A forensic expert shall not have the right to:

1) negotiate with participants to the proceedings on issues related to the conduct of a forensic examination, without the knowledge of the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending;

2) self-assemble materials for the research;

3) conduct research that could lead to the total or partial destruction of objects or change of their appearance or basic qualities, if there was no special permit of the body (person) that appointed the forensic examination;

4) tell anyone about the results of the forensic examination, except for the body (person) that appointed it.

Footnote. Article 18 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

19. Obligations of a forensic expert

A forensic expert shall be obliged:

1) to appear when summoned by the body conducting criminal proceedings, the court, the body (official), where the case on administrative offence is pending;

2) to conduct a comprehensive, complete and objective research of the objects provided to him/her, to give reasonable written opinion on questions posed to him/her;

3) in cases provided by the law, to refuse to give an opinion, to make a substantiated written statement on impossibility of giving the opinion and send it to the body (person) that appointed the forensic examination;

4) to testify on issues related to the conducted research and made opinion;

5) to ensure the safety of the objects submitted for the research;

6) not to disclose information about the circumstances of the case and any other information became known to him in connection with the conduct of a forensic examination, including information that constitutes state, commercial or other secret protected by the law;

7) to submit cost estimates and report on expenditure incurred when conducting a forensic examination to the body (person) that appointed the forensic examination.

Footnote. Article 19 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

20. Forensic examination bodies

The following shall be referred to forensic examination bodies:

1) forensic examination bodies of the Ministry of Justice of the Republic of Kazakhstan;

2) forensic examination bodies of the authorized body in the field of health care, including specialized psychiatric and narcological organizations of local bodies of state administration of health care, which were assigned to the functions of conducting a forensic-psychiatric, a forensic-narcological examinations.

Footnote. Article 20 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

21. The rights of a head of a forensic examination body

1. A head of a forensic examination body shall have the right:

1) to return a resolution, ruling on appointment of a forensic examination without execution to the body (person) that appointed the forensic examination and return the objects provided for the research specifying appropriate reasons in cases if:

The materials submitted for the forensic examination do not meet the requirements of the law;

there is no forensic expert with necessary special scientific knowledge in the relevant forensic examination body;

the questions, posed to the forensic expert mentioned in a resolution, ruling on appointment of the forensic examination go beyond his/her competence;

material-technical base of the body of the relevant forensic examination does not allow to carry out required forensic science research;

2) to file a motion to the body (person) that appointed a forensic examination regarding inclusion of persons in the committee of forensic experts, who are not employees of the relevant forensic examination body, if their special scientific knowledge is necessary to give an opinion;

3) to file a motion to the body (person) that appointed a forensic examination regarding engagement of a forensic expert of a foreign country;

4) to file a substantiated motion regarding deadline extension for conducting a forensic examination to the body (person) that appointed the forensic examination.

The head of the forensic examination body shall also have other rights provided by the law.

2. A head of a forensic examination body shall not have the right:

to self-reclaim the objects necessary for conducting a forensic examination;

2) without the consent of the body (person) that appointed a forensic examination to engage persons for its conduct, who are not employees of the relevant forensic examination body;

3) to give instructions to a forensic expert that predetermine the content of the conclusions of the definite forensic examination.

22. The obligations of a head of a forensic examination body

A head of a forensic examination body shall be obliged to:

1) assign the conduct to a specific forensic expert or commission of forensic experts of the forensic examination body in accordance with the requirements of the law, when receiving resolutions, rulings on appointment of a forensic examination and research objects;

2) without violating the principle of the independence of a forensic expert, to ensure the control over compliance with the period of conduct of a forensic examination, over comprehensiveness, completeness and objectivity of the conducted research, over preservation of objects of the forensic examination;

3) not to disclose information that become known to him in connection with the organization of conduct of a forensic examination;

4) to provide the conditions necessary for conducting research.

Chapter 3. CONDUCT OF A FORENSIC EXAMINATION

23. Grounds for conducting a forensic examination

1. Ground for conducting a forensic examination shall be a resolution, ruling on appointment of the forensic examination of the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, issued according with the procedure provided by the laws of the Republic of Kazakhstan.

2. The body (person) that appointed a forensic examination shall provide the objects of research and case materials necessary for the conduct of forensic science research and giving an opinion of a forensic expert.

3. Specifics of appointment of a forensic examination of living persons are defined in Chapter 4 of this Law.

Footnote. Article 23 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

24. Restrictions when organizing and conducting a forensic examination

1. Conduct of a forensic examination cannot be entrusted to a forensic examination body, and initiated conduct of the forensic examination shall be immediately terminated in the presence of the grounds provided by the law.

2. A forensic expert shall be disqualified from participation in conduct of a forensic examination, and if it was entrusted to him/her, he/she shall immediately terminate its conduct in the presence of the grounds provided by the laws of the Republic of Kazakhstan.

Footnote. Article 24 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

25. Time limits for conducting a forensic examination

1. A time limit for conducting a forensic examination shall be calculated from the date of accepting a resolution, ruling on appointment of the forensic examination and its objects for performance by a forensic examination body, the individual, who carries out forensic science activity under the license or is not an employee of the forensic examination body engaged as a forensic expert.

2. A time limit for conducting a forensic examination shall not exceed thirty days, apart from exceptional cases provided by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

Extension of the time limit for conducting the forensic examination shall be carried out by the body (person) that appointed the forensic examination upon a substantiated motion of the head of the forensic examination body or the forensic expert (forensic experts) who is not an employee of the forensic examination body.

The procedure for the extension of the time limit for the stay of persons exposed to medical examination on a voluntary basis, and persons placed in a medical organization in order to conduct the forensic examination shall be established in paragraphs 2 and 3 of Article 37 of this Law.

3. General criteria for categorization of forensic examinations depending on difficulty, the procedure for calculating the time limits for conducting forensic examinations depending on the category of their difficulty, as well as the procedure for extending the time limits for conducting a forensic examination shall be established by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

4. When in the course of the conduct of a forensic examination the necessity to submit additional materials arises, without study of which it is impossible to give an

opinion, a substantiated motion shall be sent by the head of forensic examination body or forensic expert, who is not an employee of the forensic examination body, to the address of the body (person) that appointed the forensic examination.

The conduct of the forensic examination in the specified case shall be suspended by the head of forensic examination body or forensic expert, who is not an employee of the forensic examination body, prior to the elimination of the circumstances having given rise to the suspension, but not more than ten days.

If the circumstances having given rise to the suspension of the conduct of the forensic examination are not eliminated within the specified time limit, a resolution, ruling on appointment of the forensic examination and materials submitted for its conduct shall be sent without execution to the address of the body (person) that appointed the forensic examination.

5. An opinion of a forensic expert or a statement on impossibility of giving an opinion shall be sent to the body (person) that appointed the forensic examination within three days after its preparation.

Footnote. Article 25 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

26. The presence of the participants during a forensic examination

1. The body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, shall have the right to be present during a forensic examination, to receive clarifications of a forensic expert regarding his/her ongoing actions. The fact of the presence of such persons during the forensic examination shall be reflected in the expert's opinion.

2. With the permission of the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, participants to the proceedings protecting their or represented rights and interests may be present during a forensic examination. In this case, the participation of the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, is obligatory.

3. When the corresponding motion is upheld by the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, the person that filed it shall be notified of the time and place of conducting a forensic examination. Non-appearance of the notified person shall not prevent the conduct of the forensic examination.

4. Participants to the proceedings attending a forensic examination shall not have a right to interfere in the course of the research, but may provide explanations regarding the subject of the forensic examination.

5. In case a participant to the proceedings attending a forensic examination interferes with the activities of a forensic expert, the latter has the right to suspend the research and file a motion on cancellation of the permission to be present during the forensic examination granted to the specified participant before the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending.

6. When drawing up an opinion by a forensic expert, as well on the stage of discussions by forensic experts and framing the conclusions, if the forensic examination is conducted by a commission of forensic experts, the presence of participants to the proceedings shall not be allowed.

7. Specifics of the presence of participants to the proceedings during a forensic examination of living persons shall be defined in Article 41 of this Law.

27. Handling requirements with objects of a forensic examination

1. Objects of a forensic examination, if their dimensions and properties make it possible, shall be transferred to an expert in the packed and sealed form. In other cases the body (person) that appointed the forensic examination shall ensure the delivery of the forensic expert to the location of the research objects, free access to them and the conditions necessary for the research.

2. During the research, material evidence and documents, with the permission of the body (person) that appointed a forensic examination, may be damaged or used only to the extent that it is necessary to carry out the research and provide an opinion. The said permission shall be contained in the resolution, ruling on appointment of the forensic examination or in a substantiated resolution, ruling on satisfaction of the motion of the forensic expert or partial refusal to satisfy.

3. The handling requirements with the objects of a forensic examination shall be established by the Government of the Republic of Kazakhstan.

Footnote. Article 27 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

28. Conduct of a panel forensic examination

1. A panel examination shall be appointed in cases of necessity to conduct complex forensic science research and shall be conducted by at least two experts in one specialty.

2. In order to conduct a forensic-psychiatric examination on the issue of person's capacity at least three forensic experts shall be appointed.

3. A resolution, ruling of the body (person) that appointed a panel forensic examination shall be mandatory for a head of a forensic examination body. The head of the forensic examination body shall also be entitled to decide independently regarding the conduct of the panel examination based on materials submitted in accordance with

the resolution, ruling on appointment of the forensic examination and to organize its conduct.

4. To coordinate the activities of the forensic experts, who are the members of the panel, a head of a forensic examination body or the body (person) that appointed a forensic examination shall appoint a leading expert.

The leading expert shall develop a general plan of forensic science research, determine the dates of conduct of certain research within the total period of conduct of the forensic examination and control their compliance, communicate with the body (person) that appointed the forensic examination, lead the meeting of the forensic experts.

5. When conducting a panel forensic examination, each of forensic experts shall carry out research independently, unaidedly and in full.

6. The members of the panel of experts shall jointly analyze the findings, and when coming to a consensus shall sign an opinion or a statement on impossibility to give the opinion. In the event of disagreement between the experts, each of them or some of experts shall give a separate opinion or the expert, whose opinion is at odds with the findings of the other members of the panel, shall formulate it separately in the opinion.

29.A complex examination

1. A complex examination shall be appointed when in order to establish the circumstances relevant to the case, research is required on the basis of the different branches of knowledge, and shall be conducted by forensic experts of different specialties within their competence.

2. Organization of conduct of a complex examination entrusted to a forensic examination body shall rest on its head. The head of the forensic examination body shall also have a right to decide independently regarding the conduct of a complex examination based on materials submitted in accordance with the resolution, ruling on appointment of the forensic examination and to organize its conduct.

3. Conduct of a complex forensic examination shall be conducted with due regard to the requirements of paragraph 4 of Article 28 of this Law.

When conducting the complex forensic examination, each of forensic experts shall carry out research within their special scientific knowledge.

An opinion of the complex forensic examination shall specify what research each of the forensic expert had conducted, its scope and to what conclusions he/she came. Each forensic expert shall sign the opinion in part that reflects his/her research.

4. On the basis of the findings of the research carried out by each of forensic experts, they formulate a general conclusion (conclusions) regarding the circumstance for which substantiation a forensic examination was appointed. The general conclusion (conclusions) shall be formulated and signed only by experts competent in the assessment of the findings. If the ground for a final panel's conclusion or its part

thereof are the facts established by one of the forensic experts (separate forensic experts), then this should be stated in the opinion.

5. In the event of disagreement between forensic experts, the research findings shall be finalized in accordance with paragraph 6 of Article 28 of this Law.

6. Specifics of organization of conduct of complex forensic examinations entrusted to different forensic examination bodies shall be established by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

Footnote. Article 29 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

30. Conduct of supplementary and repeated forensic examinations

1. A supplementary forensic examination shall be appointed in case of lack of clarity or completeness in a forensic expert' opinion, as well as of the need to settle additional issues related to the previous research.

Conduct of the supplementary forensic examination may be entrusted to the same or different forensic expert.

When entrusting the conduct of the supplementary examination, a forensic expert shall be provided with the opinion of the previous forensic examination.

2. A repeated forensic examination shall be appointed in order to examine the same objects and settlement of the same questions in cases where the previous opinion of the forensic expert is not sufficiently substantiated or his/her conclusions raise doubts or procedural rules on appointment and conduct of a forensic examination have been substantially violated.

The resolution, ruling on appointment of the repeated forensic examination shall give reasons for disagreeing with the findings of the previous forensic examination.

Conduct of the repeated forensic examination shall be entrusted to a panel of forensic experts. The forensic experts, who conducted the previous forensic examination, may be present during the repeated forensic examination and give explanations to the panel, but they shall not be involved in the expert research and in drawing up the opinion.

When entrusting the conduct of the repeated forensic examination, a forensic expert shall be provided with the opinion of the previous forensic examinations.

3. If the second or subsequent forensic examination is appointed based on several grounds, some of which refer to a supplementary forensic examination, and the others - to a repeated one, such forensic examination shall be conducted by the rules of the repeated examination.

31. An expert opinion

1. Based on the findings of the research, a forensic expert (s) on his/her own behalf shall draw up a written opinion and certify it with his/her signature and personal seal.

In case of conduct of forensic examination by a forensic examination body, the signature of the forensic expert (s) shall be certified by the seal of the said body.

2. An expert opinion shall specify: the date of its issuance, date and place of conduct of a forensic examination; grounds for conduct of the forensic examination; information about the body (person) that appointed the forensic examination; information about the forensic examination body and (or) the forensic expert (forensic experts) entrusted with the conduct of the forensic examination (surname, first name, patronymic (if any), education, expert specialty, professional experience, academic degree and academic title, position held); note about the fact that he had been warned about criminal responsibility for knowingly giving false opinion certified by the signature of the forensic expert(s); the questions posed for the settlement by the forensic expert (s); information about the participants to the proceedings that were present during the forensic examination and about their explanations; research objects; content and research findings showing the methods used; evaluation of the findings of the research conducted, reasoning and formulation of conclusions on the questions put before the forensic expert (s).

3. An opinion must contain the reasons for impossibility to answer all or some of the questions posed to a forensic expert (experts), if the circumstances specified in Article 32 of this Law have been revealed in the course of forensic science research.

4. The specifics for formalization of the findings of panel, complex, supplementary and repeated forensic examination shall be determined by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

5. The materials illustrating an expert opinion (photo tables, charts, graphs, tables and other materials) and certified in accordance with paragraph 1 of this Article shall be attached to the opinion and forms integral part. The objects that remained after the research, including samples, shall be also attached to the opinion.

Footnote. Article 31 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

32. The statement on impossibility to give an expert opinion

1. If a forensic expert (experts) prior to conduct of the research assures himself/herself that the questions posed to him/her go beyond his/her special scientific knowledge or materials submitted to him/her are unsuitable or insufficient to give an opinion and cannot be replenished or the state of science and expert practice does not allow to answer the questions, he/she shall draw up a substantiated statement on impossibility to give the opinion and certifies it with his/her signature and personal seal . In the case of conduct of the forensic examination by a forensic examination body, a signature of the forensic expert (s) shall be certified by the seal of the said body.

2. The substantiated statement on impossibility to give the opinion shall specify: the date of its issuance, date and place of conduct of the forensic examination; grounds for conducting the forensic examination; information about the body (person) that appointed the forensic examination; information about the forensic examination body and (or) forensic expert (forensic experts) entrusted to conduct the forensic examination (surname, first name, patronymic (if any), education, expert specialty, professional experience, academic degree and academic title, position held); note about the fact that he/she had been warned about criminal responsibility for knowingly giving false opinion certified by the signature of the forensic expert(s); the questions posed for the settlement by the forensic expert (s); research objects; reasons for impossibility to answer the questions posed to the forensic expert (experts).

3. The structure and content of a statement on impossibility to give an opinion shall be determined by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

4. If a forensic expert gives an opinion regarding one set of questions specified in the resolution, ruling on appointment of a forensic examination, and regarding other set of question there are reasons for drawing up a statement on impossibility to give the opinion, he/she shall draw up a single document - the opinion of the forensic expert.

Footnote. Article 32 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

Chapter 4. SPECIFICS OF CONDUCTING A FORENSIC EXAMINATION OF LIVING PERSONS

33. Persons in respect of whom a forensic examination can be made

The scope of persons in respect of whom a forensic examination can be made shall be established by the law.

34. A place of conduct of a forensic examination of living persons

1. A forensic examination of living persons can be done in a medical organization or elsewhere, where there are conditions necessary for carrying out forensic science research and ensuring the legitimate rights and interests of these persons.

2. Should the need arise for hospital stay check up of the person during a forensic examination, he/she may be placed in a medical organization according to the procedure provided for by Article 36 of this Law.

3. Transportation of the persons, in respect of whom the court appointed a forensic examination to the place of conduct and after conduct of forensic science research, shall be ensured by the body (person)that appointed the forensic examination.

35. Voluntariness and involuntariness during a forensic examination of living persons

1. A forensic examination of living persons can be done voluntarily or involuntarily
2. If a forensic examination is conducted on a voluntary basis, a written consent of the person to be subjected to forensic science research shall be submitted to a forensic examination body.
3. If the person in respect of whom a forensic examination was appointed has not reached the age of majority or was declared incapable by a court, a written consent for conducting the forensic examination in respect of that person shall be given by his/her legal representative or the guardianship and wardship authority.
4. Conduct of a forensic examination of living persons on involuntarily basis can be allowed only in the cases expressly provided for by the laws of the Republic of Kazakhstan.

Footnote. Article 35 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

36. The grounds and procedure for placement of a person in a medical organization for conducting a forensic examination

1. If conduct of a forensic examination in respect of a person involves carrying out a forensic science research in hospital environment, he/she shall be placed in the appropriate medical organization on the basis of the resolution, ruling on appointment of the forensic examination. 2. Involuntary placement of the person, not kept in custody, in a medical organization for conducting a forensic-psychiatric examination shall be permitted only by court decision.

Involuntary placement of the person, not kept in custody, in a medical organization for conducting a forensic-medical examination shall be permitted only by court decision or a prosecutor's sanction.

3. In the cases, provided for in paragraph 2 of this Article, within twenty-four hours, the body (person) that appointed a forensic examination shall notify about the location of the person who is involuntarily placed in a medical organization for conducting the forensic examination someone of the members of his/her family of majority age, other relatives or close persons, or in the absence of such persons - the body of internal affairs at the place of residence of the said person.

37. Period of stay of a person in a medical organization during a forensic examination

1. A person may be placed in a medical organization for conducting a forensic-medical or forensic-psychiatric examination for the period up to thirty days, aside from exceptional cases provided by the laws of the Republic of Kazakhstan.

2. Extension of the said period for the person going through a forensic examination on a voluntary basis shall be carried out with his/her consent by the body (person) that appointed the forensic examination upon a substantiated motion of a head of the

forensic examination body or a forensic expert (forensic experts), who is not an employee of the forensic examination body.

3. Extension of the period of stay in a medical organization for those involuntarily placed in it for conducting a forensic examination shall be carried out according to the procedure provided by the laws of the Republic of Kazakhstan.

4. Violation of the period of stay in a medical organization of the person involuntarily placed in it for conducting a forensic examination, as well as the procedure for extension of this period may be appealed by the said person, his/her defense counsel, legal representative or other representatives admitted to participation in the case according to the procedure provided by the laws of the Republic of Kazakhstan.

Footnote. Article 37 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

38. Guarantees of rights and legitimate interests of the persons in respect of whom a forensic examination is conducted

1. During a forensic examination of living persons the following shall be prohibited :

1) deprivation or oppression of their rights guaranteed by the law (including by fraud, violence, threats or other illegal means) in order to obtain information on the case;

2) the use of said persons as subjects of clinical trials of medical technologies, pharmaceutical and medicinal products;

3) the application of research means involving surgery.

2. A person, in respect of whom a forensic examination is conducted, shall be informed in an accessible for him/her form about the methods in use of forensic science research, including alternative, about possible pain or side effects by the body (person) that appointed the forensic examination. The above information shall be also provided to the legal representative, who filed a corresponding motion, of the person in respect of whom the forensic examination is conducted.

3. Medical assistance to a person in respect of whom a forensic examination is conducted may be granted only on the grounds and according to the procedure provided by the law.

4. The person placed into a medical organization shall have the possibility for filling complaints and motions. The complaints and motions filed according to the procedure provided by the law, within twenty-four hours, shall be sent to addressee and are not subject to censorship.

5. A forensic examination, conducted in respect of a person on a voluntary basis may be terminated at any stage on the initiative of the said person.

39. Conditions of conducting a forensic examination in psychiatric hospitals in respect of the persons not kept in custody

1. A forensic-psychiatric examination in respect of the persons not kept in custody shall be conducted in psychiatric hospitals.

2. During a forensic-psychiatric examination of the persons not kept in custody in psychiatric hospitals, they are subject to the rules of the Criminal Procedure and Civil Procedure Codes of the Republic of Kazakhstan.

3. The said persons shall enjoy the rights of patients of psychiatric hospitals established by the legislation of the Republic of Kazakhstan on health care.

Footnote. Article 39 as amended by the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication)

40. Conditions of conducting a forensic examination in psychiatric hospitals in respect of the persons kept in custody

1. A forensic-psychiatric examination in respect of the persons kept in custody shall be conducted in psychiatric hospitals specifically designed to place the said persons in it.

2. During a forensic-psychiatric examination of the persons kept in custody in psychiatric hospitals, they are subject to the rules of the Criminal Procedure Code of the Republic of Kazakhstan.

3. The said persons shall enjoy the rights of patients of psychiatric hospitals with prescribed for them features established by the legislation of the Republic of Kazakhstan on health care.

41. The presence of participants to the proceedings during a forensic examination of living persons

1. The presence of participants to the proceedings during a forensic examination of living persons shall be determined by the Criminal Procedure and Civil Procedure Codes of the Republic of Kazakhstan, as well as Article 26 of this Law, except as provided for by paragraph 2 of this Article.

2. Conduct of a forensic-psychiatric and a forensic psychological-psychiatric examination shall be carried out under conditions of confidentiality.

3. During forensic science research of a person accompanied by his/hernudity, there can be only persons of the same sex. This restriction does not apply to doctors and other health professionals involved in carrying out the said research.

Chapter 5. SCIENTIFIC-METHODOLOGICAL, INFORMATION SUPPORT OF FORENSIC SCIENCE ACTIVITY, PROFESSIONAL TRAINING AND QUAIFICATION UPGRADING OF FORENSIC EXPERTS

42. Scientific-methodological and educational support of forensic science activity. Professional training and qualification upgrading of forensic experts

1. Scientific-methodological support of forensic science activity, as well as professional training and qualification upgrading of forensic experts shall lie upon the forensic examination bodies of the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

2. Development, gustation and implementation of methods of forensic science research shall be carried out according to the procedure provided by the Ministry of Justice of the Republic of Kazakhstan or the authorized body in the field of health care.

Footnote. Article 42 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

43. State register of methods of forensic science research of the Republic of Kazakhstan

Information about the methods of forensic science research that meet the requirements of this Law shall be entered in the State Register of methods of forensic science research of the Republic of Kazakhstan, goals, procedure for formation and use of which shall be established by the Government of the Republic of Kazakhstan.

Footnote. Article 43 is in the wording of the Law of the RoK dated 02.07.2013 № 113-V (shall be enforced upon expiry of ten calendar days after its first official publication).

44. Informational support of activities of forensic examination bodies

A head of a forensic examination body shall have the right to file a motion to the body conducting the criminal proceedings, the court, the body (official), where the case on administrative offence is pending, for the receipt, upon the completion of the proceedings, of subjects that were material evidence in order to use in a practical, scientific and educational-methodological activities.

Chapter 6.FINANCIAL AND MATERIAL-TECHNICAL SUPPORT OF FORENSIC SCIENCE ACTIVITY IN FORENSIC EXAMINATION BODIES

45. Funding of forensic science activity

1. Funding of forensic science activity of forensic examination bodies, including the conduct of a forensic examination in criminal, civil cases and cases on administrative offences, shall be carried out using budget funds, except as specified in part four of Article 242 of the Criminal Procedure Code of the Republic of Kazakhstan.

2. Payments for conducting a forensic examination in civil cases shall be made in accordance with the Civil Procedure Code of the Republic of Kazakhstan.

46. Standards and requirements of material-technical support of conducting a forensic examination

A forensic expert may conduct his/her activities provided there are specially equipped facilities that meet the standards and requirements established by the Government of the Republic of Kazakhstan.

Chapter 7. INTERNATIONAL COOPERATION IN THE FIELD OF FORENSIC SCIENCE ACTIVITY

47. International cooperation in the field of forensic science activity

Forensic examination bodies shall have the right, in accordance with the law, to establish international links with bodies and services of foreign states engaged in forensic science activity, in order to conduct joint scientific research, exchange scientific and methodological information, professional training and qualification upgrading of forensic experts.

48. Conduct of a forensic examination under the instructions of the competent authority of a foreign state

A forensic examination can be carried out under the instructions of the competent authority of the foreign state with which the Republic of Kazakhstan has an international agreement. In these cases, the legislation of the Republic of Kazakhstan shall apply, unless otherwise is stipulated by the international treaty ratified by the Republic of Kazakhstan.

49. Conduct of a forensic examination with the involvement of forensic experts of a foreign state

1. The body (person) that appointed a forensic examination shall have the right to file a motion for the involvement of experts of foreign states in the field of a forensic examination according to the procedure provided by the law, on its own initiative or at the request of a head of a forensic examination body.

2. Conduct of a forensic examination with the involvement of forensic experts of foreign states shall be carried out in accordance with the Criminal Procedure, Civil Procedure Codes of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences, as well as in accordance with this Law.

Chapter 8. FINAL PROVISIONS

50. Responsibility for violation of the legislation of the Republic of Kazakhstan on forensic science activity

Violation of the legislation of the Republic of Kazakhstan on forensic science activity shall entail responsibility established by the law.

51. The procedure for enactment of this Law

1. This Law shall be enforced upon expiry of ten calendar days after its first official publication.

2. The Law of the Republic of Kazakhstan dated 12 November 1997 “On forensic examination” (Bulletin of the Parliament of the Republic of Kazakhstan, 1997, № 21, Art. 276; 2000, № 6, Art. 141; 2001, № 21-22, Art. 281; 2004, № 23, Art. 142; № 24, Art. 153; 2005, № 10, Art. 32; 2006, № 13, Art. 86; 2007, № 2, Art. 18; № 9, Art. 67) shall be considered to have lost force.

The President
of the Republic of Kazakhstan

N.Nazarbayev

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Justice of the Republic of Kazakhstan