

LEGISLATIVE COUNCIL BRIEF

Dangerous Drugs Ordinance
(Chapter 134)
Independent Commission Against Corruption Ordinance
(Chapter 204)
Police Force Ordinance
(Chapter 232)

DANGEROUS DRUGS, INDEPENDENT COMMISSION AGAINST CORRUPTION AND POLICE FORCE (AMENDMENT) BILL 1999

INTRODUCTION

. At the meeting of the Executive Council on 8 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999, at the Annex, should be introduced into the Legislative Council to provide the power for authorised Police and ICAC officers to take body samples from suspects to conduct forensic analysis, including DNA analysis, for crime investigation purposes, and to provide the power for authorised Police and Customs and Excise officers to take urine samples from suspects to conduct analysis for investigation of drug-related offences.

BACKGROUND AND ARGUMENT

General Background

2. The Law Reform Commission (LRC) released its “Report on Arrest” in August 1992. It recommended that law enforcement agencies should adopt a number of provisions in the United Kingdom’s Police and Criminal Evidence (PACE) Act 1984 which provided for detailed procedural requirements and safeguards governing the operation of law enforcement agencies to prevent possible abuse of power. The Government formed an inter-departmental Working Group (WG) to study the LRC Report and arrived at its own proposals. In so doing, the WG has taken into account the circumstances of Hong Kong and endeavoured to strike a balance between the need for effective law enforcement and protection of the rights of individuals.

3. The WG released its proposals for public consultation in October 1996 and they received general support from the community. Having considered the WG's proposals on 17 June 1997, the then Governor in Council directed that the WG’s proposals be implemented in phases. One of the proposals is to provide the law enforcement agencies with the power to take body samples from suspects under certain conditions.

4. Under our proposals, intimate sample means a sample of blood, urine, semen or any other tissue fluid, or pubic hair, a dental impression or a swab taken from a person’s body orifice other than the mouth or from any private part of a person’s body. Non-intimate sample means a sample of hair other than pubic hair, a sample taken from

a nail or from under a nail, a swab taken from any part other than a private part of a person's body including the mouth but not any other body orifice, saliva, an impression of any part of a person's body other than those described in section 59(6) of the Police Force Ordinance.

5. The purpose of our proposals is to provide the law enforcement agencies with the statutory power to obtain body samples from suspects for conducting forensic analysis i.e. scientific comparison of some property of the sample obtained from a suspect with the same property of a sample from a crime scene. For example, hair found at a crime scene may be compared against the hair obtained from a suspect for dyestuff. One of the most powerful forensic analysis is DNA analysis, which will enhance the capability of our law enforcement agencies in detecting and investigating crimes. At present, law enforcement agencies have no statutory power to take body samples from suspects for such purposes. The existing practice is based on consent i.e. body samples could only be taken with the consent of the suspect.

6. Likewise, urine samples are obtained by Customs and Excise officers with consent from suspects for ascertaining whether they have concealed drugs in their bodies. It should, however, be noted that under the Dangerous Drugs Ordinance, a Police or Customs and Excise officer at the rank of inspector or above has the power to request a registered medical practitioner or a nurse to search the rectum, vagina, ears and any other body cavity of a person who is reasonably suspected of concealing narcotics inside his body. Thus urine sample is only one of the ways to detect drugs concealed in the body of a person. Urine sample cannot be used for DNA analysis but it is included in our proposals because it falls under the definition of an intimate sample.

7. With respect to forensic analysis, the analysis of the material extracted from an intimate or non-intimate sample of a person will give a DNA profile of the subject in the form of a series of numbers that is highly specific to that person. The DNA profile can therefore be used to identify a person with a high degree of certainty.

8. DNA analysis results can be obtained from various bodily secretions and body cells (blood, semen, skin secretions or flakes of skin such as dandruff) that may be left behind at a crime scene by a criminal. Comparison of the DNA profile of a suspect against the DNA profile derived from material obtained at the crime scene can implicate a suspect with a high degree of certainty or it can exonerate him absolutely as the source of the material.

9. Hence it would be possible to develop for crime investigation purposes a DNA database consisting of DNA profiles derived from material obtained from crime scenes as well as DNA profiles of criminals who have been convicted of serious crimes. When a suspect is arrested and his samples taken, law enforcement agencies can accurately confirm (or disprove) not only his involvement in that particular case but also other previous undetected cases. Overseas experience indicates that this is a very powerful tool in detecting crimes.

WG's Recommendations

10. The LRC recommends, among other things, that intimate samples may be taken from a person in Police detention if-

- (i) consent is given; and
- (ii) it is authorised by an officer at the rank of Superintendent or above who has reasonable grounds for suspecting the person's involvement in a serious arrestable offence (i.e. an offence for which the term of imprisonment is five years or more) and for believing that the sample will confirm or disprove his involvement.

Prior authorisation from a magistrate should be obtained for the taking of intimate samples with consent in all non-urgent cases. This may be waived if prior authorisation is not possible or impractical. Adverse inferences could be drawn by the court if consent was refused by the person without good cause.

11. The LRC further recommends that non-intimate samples may be taken from a person-

- (i) if consent is given; or
- (ii) without consent if the person is in Police detention or is being held in Police custody and the taking of non-intimate sample is authorised by an officer at the rank of Superintendent or above who has reasonable grounds for suspecting the person's involvement in a serious arrestable offence and for believing that the sample will confirm or disprove his involvement.

12. Whilst accepting the LRC recommendation in paragraphs

10-11 above, the WG considered that in view of the potential intrusiveness of non-consensual taking of non-intimate samples, the mechanism of judicial authorisation should be introduced. It should, however, be noted that prior judicial authorisation for non-consensual taking of non-intimate samples is neither part of PACE nor the recommendation of the LRC Report on Arrest.

Review of WG's Recommendations

13. Forensic DNA analysis has advanced tremendously in the last decade, and in particular, during the past few years. In the past, forensic DNA analysis required relatively large amount of samples (usually blood and semen) and was very time-consuming. With the advancement of technology, it is now possible to obtain a buccal cell sample by wiping a purpose-designed swab along the inside of the cheek part of the mouth of a person. This buccal swab technique has been chosen since the degree of interference is relatively low, entirely painless, quick and efficient to carry out and will produce a full DNA profile using sophisticated analytical instruments.

14. The advancement of technology means that we can increasingly rely on the taking of a buccal swab (a non-intimate sample) with a relatively low degree of interference to achieve our objective of enhancing the capabilities of our law enforcement agencies in investigating crimes.

15. From a practical point of view, the wide application of the buccal swab technique would mean that the court could conceivably be burdened with thousands of cases if judicial authorisation is required.

This will clearly render the mechanism impracticable for implementation and will cause delay in the investigation of crimes.

16. Taking into account of the above, we propose that judicial authorisation should not be required for the non-consensual taking of non-intimate samples. However, in order to safeguard the right of a suspect, strict procedures should be put in place to govern the manner in which non-intimate samples are taken without consent from the suspect.

17. Although we will rely increasingly on the taking of non-intimate samples for DNA analysis, it is still necessary to retain the legal basis for the taking of intimate samples as such samples may still be required in the investigation of certain crimes. In view of its intrusiveness, we believe that judicial authorisation should be required in all cases involving the taking of intimate samples. We propose, however, to remove the power to draw adverse inference from a suspect's refusal to consent to taking of an intimate sample without good cause as we consider it no longer necessary.

Legislative Proposals

18. Our legislative proposals are as follows -

- (a) an intimate sample can only be taken from a suspect if written consent is given and if authorised by a Police officer at the rank of Superintendent or above (or by an officer of comparable rank in the Customs and Excise for taking urine sample) who has reasonable grounds for suspecting a person's involvement in a serious arrestable offence (i.e. an

offence for which the term of imprisonment is five years or more) and for believing that the sample will tend to confirm or disprove his involvement in the crime. Judicial authorisation is required for the taking of intimate samples in all cases. The magistrate will have the power to conduct an inter-partes hearing if necessary;

- (b) the suspect should be clearly informed of the grounds and purposes for taking his intimate samples, the authorisation being given and his rights to refuse to do so. The latter will ensure that consent is given freely and voluntarily ;
- (c) a non-intimate sample can be taken from a suspect if authorised by a Police officer at the rank of Superintendent or above (or by an officer of comparable rank in the ICAC) who has reasonable grounds for suspecting the person's involvement in a serious arrestable offence and for believing that the sample will tend to confirm or disprove his involvement. If the suspect refuses to give consent, the law enforcement agency may use reasonable force to obtain the non-intimate sample;
- (d) the suspect should be clearly informed of the grounds and purposes for taking the non-intimate sample and the authorisation being given. If the suspect gives consent to the taking of non-intimate samples (though consent is not a prerequisite for doing so), it should be recorded properly;
- (e) an intimate sample (except urine) has to be taken by a

medical practitioner or a dentist, as appropriate. As regards an non-intimate sample, it may be taken by a medical practitioner, a trained law enforcement officer or a trained officer of the Government Laboratory;

- (f) if the suspect is not charged or not convicted on that occasion, his sample and DNA profile will be destroyed as soon as practicable;
- (g) the DNA profile of a suspect convicted of a serious arrestable offence would be stored in a DNA database to assist in the detection and investigation of crimes in future;
- (h) the Police would be empowered to take a buccal swab from a person convicted of a serious arrestable offence after the commencement of this Ordinance if such sample has not been taken before. Such DNA data will be stored in the DNA database to be set up. This provision has no retrospective effect to those persons convicted of a serious arrestable offence before the commencement of this Ordinance; and
- (i) a mechanism will be established for people to volunteer the storage of DNA information in our DNA database as overseas experience suggests that some reformed offenders may wish to volunteer such information to pre-empt further approaches from the law enforcement agencies.

THE BILL

19. Clause 2 amends the Dangerous Drugs Ordinance to provide the power for authorised Police and Customs and Excise officers to take a urine sample from suspects. The proposed section 54AA(2) stipulates that authorisation for taking urine sample may only be given if a Police or Customs and Excise officer at the rank of Superintendent or above has reasonable suspicion of a person's involvement in a serious arrestable offence relating to dangerous drugs and the taking of the sample will tend to confirm or disprove his involvement. The proposed section 54AA(4) further requires that the authorised officer must explain to the person concerned of the grounds and purpose of obtaining the sample and obtain the consent of the person concerned. Finally, it is necessary to obtain judicial approval under the proposed section 54AA(6) before the urine sample can be taken.

20. The proposed section 54AB(1) and (2) limit the use of the urine sample in relation to an investigation of or any proceedings for a drug related offence. The proposed section 54AB(4) further lays down that the sample and the analysis have to be destroyed as soon as practicable after the expiry of 12 months or the extended period if the person has not been charged or if the charge has been withdrawn or the person is acquitted of the offence; or under the proposed section 54AB(6), the sample will need to be destroyed at the conclusion of all proceedings in relation to such offence which the suspect has been charged with.

21. Clause 4 amends the ICAC Ordinance to provide the power for authorised ICAC officers to take non-intimate samples from suspects (intimate samples are not required by ICAC). The proposed section

10E(2) stipulates that an ICAC officer at the rank of Senior Commission Against Corruption Officer or above may authorise the taking of a non-intimate sample if he has reasonable suspicion of a person's involvement in a serious arrestable offence in relation to offences under section 10 of the ICAC Ordinance and believes that the taking of the sample will tend to confirm or disprove a person's involvement. The proposed section 10E(4) further requires that the authorised officer must explain to the person concerned the nature of the offence in which the person is suspected to have been involved and the grounds and purpose for obtaining his sample. The officer may obtain the suspect's consent though this is not a prerequisite for taking a non-intimate sample.

22. The proposed section 10F(1) and (2) limits the use of a non-intimate sample and the results of the forensic analysis for crime investigation purpose under the ICAC Ordinance. The proposed section 10G(1) further stipulates that the sample and the analysis have to be destroyed as soon as practicable after the expiry of 12 months or the extended period if the person has not been charged or if the charge has been withdrawn or the person is acquitted of the offence; or under the proposed section 10G(4), the sample will need to be destroyed at the conclusion of all proceedings in relation to such offence which the suspect has been charged with.

23. Clause 6 amends the Police Force Ordinance in line with the above amendments. It provides Police officers with the power to take intimate (proposed sections 59A and 59B) or non-intimate samples (proposed section 59C) from suspects for crime investigation purposes. It sets out the conditions and procedures under which the samples may be taken, used (proposed section 59D) and disposed of (proposed section

59H). It also provides for the creation of a DNA database (proposed section 59G) to store DNA information of convicts of serious arrestable offences (proposed section 59E) and establishes a mechanism whereby people may volunteer to provide non-intimate samples (proposed section 59F) for the purpose of storing DNA information in the DNA database.

LEGISLATIVE TIMETABLE

24. The legislative timetable will be -

Publication in the Gazette	17 June 1999
First Reading and commencement of Second Reading debate	30 June 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

25. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law. Although the use of DNA information of a suspect for general investigation of undetected crime may be challenged under the International Covenant of Civil and Political Rights, it is justifiable in the wider public interest to provide such power in view of the law enforcement needs.

BINDING EFFECT OF THE LEGISLATION

26. The Bill does not affect the current binding effect of the Ordinances to be amended.

FINANCIAL AND STAFFING IMPLICATIONS

27. We estimate that the start-up cost for the DNA analysis is about \$9 million, which is required for procurement and installation of laboratory instruments and equipment for the analysis. The Government Laboratory will require an annually recurrent operating cost of \$3.5 million for additional staff and for consumable chemicals for DNA profiling tests. Both the start-up cost and the annually recurrent cost will be absorbed from within the global allocation of the Security Bureau. Arising from the implementation of the Bill to facilitate the taking of body samples from suspects, there will be additional workload for the Police, the Customs and Excise Department and the ICAC. As the taking of samples from suspects for crime investigation purpose is part and parcel of their law enforcement duties, they will absorb the workload from within their resources. In addition, there will be additional workload for the Judiciary to handle the proposed judicial authorisation for taking intimate samples. The Judiciary will absorb the workload from within its resources.

PUBLIC CONSULTATION

28. The Legislative Council Panel on Security was consulted on the current proposals on 11 February 1999. The Panel generally supported the proposal for the taking of non-intimate sample by buccal swab. Some Members expressed the view that the DNA database should be handled with due care to avoid intruding into one's privacy. Accordingly, we have made it clear in the Bill that access to the DNA database is restricted to crime investigation purposes. Some Members have suggested adopting a higher threshold (i.e. an imprisonment term of longer than five years) for determining the need for taking samples. We believe that a higher threshold would limit the data collected and hence the effectiveness of the legislation. There was also a suggestion that the court should be empowered to order that intimate samples be taken from a suspect in very serious offences, for example, rape, even if no consent is given. We have not accepted this proposal because medical professionals will not be prepared to take intimate samples from a suspect without consent as this would go against their professional ethics.

29. We have consulted and incorporated into the Bill the comments of the Privacy Commissioner for Personal Data where appropriate. For example, we have provided for the suspect's right of access to the information derived from his sample. However, we have not accepted the Privacy Commissioner's suggestion that non-consensual taking of non-intimate samples should require prior judicial authorisation for the reasons stated in paragraphs 13-16 above. We have also declined the suggestion that the sample of a suspect should only be used for investigating that particular offence. This suggestion means that we

cannot use the DNA profile (which is in the form of a series numbers) obtained for comparison with other DNA profiles of undetected crimes. This would drastically reduce the strength of our proposals and is therefore unacceptable.

PUBLICITY

30. A press release and a LegCo brief will be issued on 15 June 1999. A spokesman will be available for answering media enquiries.

ENQUIRIES

31 Any enquiries to this brief could be directed to Mr Tony LAM, Assistant Secretary for Security, at 2810 2433.

Security Bureau
15 June 1999

**DANGEROUS DRUGS, INDEPENDENT COMMISSION AGAINST CORRUPTION
AND POLICE FORCE (AMENDMENT) BILL 1999**

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A BILL

To

Amend the Dangerous Drugs Ordinance, the Independent Commission Against Corruption Ordinance and the Police Force Ordinance.

Enacted by the Legislative Council.

PART I
PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

PART II
AMENDMENTS TO THE DANGEROUS DRUGS ORDINANCE

2. Sections added

The Dangerous Drugs Ordinance (Cap. 134) is amended by adding -

"54AA. Taking of urine samples

(1) In any investigation in respect of an offence committed or believed to have been committed, a urine sample may be taken from a person only if -

- (a) a police officer of or above the rank of superintendent or a member of the Customs and Excise

Service of or above the rank of superintendent("authorizing officer") authorizes it to be taken;

- (b) the appropriate consent is given; and
- (c) a magistrate gives approval under subsection (6) for it to be taken.

(2) An authorizing officer may only give an authorization as required under subsection (1)(a) if he has reasonable grounds -

- (a) for suspecting the involvement of the person from whom the urine sample is to be taken in a serious arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove the involvement of that person.

(3) An authorizing officer may give an authorization pursuant to subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.

(4) Where an authorization has been given pursuant to subsection (2), a police officer or a member of the Customs and Excise Service may request the person from whom the urine sample is to be taken and that person's parent or guardian if he is under the age of 18 years, to give the appropriate consent to the taking of the sample and the officer or the member, in making the request, shall inform the person and his parent or guardian, as the case may be -

- (a) of the nature of the offence in which the person is suspected to have been involved;

- (b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the involvement of that person;
- (c) that he may or may not give his consent to the taking of the sample;
- (d) that if he consents to the taking of the sample, he may at any time withdraw that consent before the sample is taken;
- (e) that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence in relation to dangerous drugs; and
- (f) that he may make a request to a police officer of or above the rank of superintendent or a member of the Customs and Excise Service of or above the rank of superintendent for access to the information derived from the sample.

(5) The appropriate consent must be given in writing and signed by the person or persons giving the consent.

(6) Where an authorization and the appropriate consent as required under subsection (1)(a) and (b) have been given, a police officer or a member of the Customs and Excise Service shall make an application to a magistrate in accordance with the Seventh Schedule for the magistrate's approval as required under subsection (1)(c) and the magistrate may give his approval in accordance with that Schedule.

(7) A urine sample may only be taken from a person by a police officer or a member of the Customs and Excise Service of the same sex as that person.

(8) In this section -
"appropriate consent" (適當的同意) means -

(a) in relation to a person who has attained the age of 18 years, the consent of that person;

(b) in relation to a person who has not attained the age of 18 years, the consent both of that person and of his parent or guardian;

"serious arrestable offence" (嚴重的可逮捕罪行) means an offence in relation to dangerous drugs for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 5 years.

54AB. Use and disposal of urine samples and information derived from analysis

(1) No person shall use a urine sample taken pursuant to section 54AA except for the purposes of forensic analysis in the course of an investigation of any offence in relation to dangerous drugs.

(2) No person shall use any information derived from the forensic analysis of a urine sample taken pursuant to section 54AA except in any proceedings for an offence in relation to dangerous drugs.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(4) The Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, shall take reasonable steps to ensure that -

(a) a urine sample taken pursuant to section 54AA; and
(b) all information derived from the forensic analysis of the sample, which may be retained by him or on his behalf are destroyed as soon as practicable after -

(i) if the person from whom the sample was taken has not been charged with any offence in relation to dangerous drugs, the expiry of -

(A) subject to subparagraph (B), 12 months from the date on which the sample is taken ("the relevant period");

(B) such further period or periods as may be extended under subsection (5) ("the extended period");

(ii) if the person has been charged with one or more offences in relation to dangerous drugs within the relevant period and the extended period, if any -

(A) the charge or all the charges, as the case may be, is or are withdrawn;

(B) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(C) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.

(5) A police officer of or above the rank of chief superintendent or a member of or above the rank of chief superintendent of the Customs and Excise Service may extend or further extend the relevant period for not more than 6 months for each extension if he is satisfied on reasonable grounds that it is necessary to the continuing investigation of the offence or offences in relation to which the sample was taken that the sample and the information derived from the forensic analysis of the sample be retained.

(6) Without prejudice to the operation of subsections (4) and (5), if a person from whom a urine sample has been taken pursuant to section 54AA is convicted of one or more offences in relation to dangerous drugs, then the Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.

54AC. Amendment of Seventh Schedule

The Chief Executive in Council may by order published in the Gazette amend the Seventh Schedule."

3. Schedule added

The following is added -

"SEVENTH SCHEDULE

[ss. 54AA(6) &
54AC]

APPLICATION FOR AND GIVING OF A MAGISTRATE'S
APPROVAL FOR THE TAKING OF URINE SAMPLES

1. An application under section 54AA(6) of this Ordinance must be made in Form 1. A copy of the authorization duly given pursuant to section 54AA(2) of this Ordinance and of appropriate consent duly given and signed under section 54AA(5) of this Ordinance must be exhibited to Form 1.
2. Form 1 together with the exhibits referred to in section 1 must be submitted to a magistrate.
3. A magistrate, on receiving the application, may -
 - (a) give his approval if he is satisfied that -
 - (i) an authorization has been duly given pursuant to section 54AA(2) of this Ordinance;
 - (ii) there are reasonable grounds -
 - (A) for suspecting the involvement of the person from whom the urine sample is to be taken in a serious arrestable offence; and
 - (B) for believing that the sample will tend to confirm or disprove the involvement of that person; and

- (iii) the appropriate consent has been duly given under section 54AA(5) of this Ordinance;
 - (b) order that an inter partes hearing shall be conducted in private for the purposes of determining whether the approval should be given or not if he considers that it is necessary in the interest of justice to do so; or
 - (c) reject the application if he thinks fit to do so.
- 4. An order made under section 3(b) must specify a hearing date and must be served on the applicant and the respondent not less than 3 days before the specified hearing date.
- 5. Where an order has been duly served under section 4, the applicant and the respondent must attend before the magistrate on the hearing date specified in the order. The respondent may be represented by his legal representative. The applicant and the respondent (or his legal representative, if any) may make representations at the hearing.
- 6. The magistrate, upon hearing the parties, may -
 - (a) give his approval if he is satisfied that -
 - (i) an authorization has been duly given pursuant to section 54AA(2) of this Ordinance;
 - (ii) there are reasonable grounds -
 - (A) for suspecting the involvement of the person from whom the urine

- sample is to be taken in a serious arrestable offence; and
- (B) for believing that the sample will tend to confirm or disprove the involvement of that person; and
- (iii) the appropriate consent has been duly given under section 54AA(5) of this Ordinance; or
- (b) reject the application if he thinks fit to do so.
7. The approval under sections 3(a) and 6(a) must be given in Form 2.

FORM 1

APPLICATION FOR AN APPROVAL FOR THE
TAKING OF A URINE SAMPLE

Section 54AA(6) of the Dangerous
Drugs Ordinance (Cap. 134)

Application No.
Writ No.

TO A MAGISTRATE OF HONG KONG
IN THE MAGISTRATES COURT AT.....

I, (name of the applicant), apply for an approval to the taking of urine sample from (name of the suspect) on the following grounds -

- (a), a police officer of or above the rank of superintendent/ a member of the Customs and Excise Service of or above the rank of superintendent* on (date) has given an authorization (which is exhibited to this form) to the taking of the sample from the said person as he has reasonable grounds -
- (i) for suspecting the involvement of the said person in a serious arrestable offence, namely an offence contrary to section of the Ordinance (Cap.); and
 - (ii) for believing that the sample will tend to confirm or disprove the involvement of the said person,
- relying on the following facts -

(b) the appropriate consent has been given (which is exhibited to this form).

Dated this day of (year).

.....
Applicant.
(signature)

*Delete whichever is inapplicable.

FORM 2

APPROVAL FOR THE TAKING OF A URINE SAMPLE

Section 54AA(6) of the Dangerous Drugs Ordinance (Cap. 134)

Application No.
Writ No.

HONG KONG. IN THE MAGISTRATES COURT AT.....

To each and all of the police officers of Hong Kong/members of the Customs and Excise Service of Hong Kong*.

APPLICATION has been made to the undersigned, a magistrate of Hong Kong, by (name of the applicant) on (date) and the undersigned magistrate, relying on the facts specified in the said application/upon hearing the parties*, has satisfied that -

- (a), a police officer of or above the rank of superintendent/a member of the Customs and Excise Service of or above the rank of superintendent* on (date) has duly given an authorization to the taking of the sample from (name of the suspect);
- (b) there are reasonable grounds -
 - (i) for suspecting the involvement of the said person in a serious arrestable offence, namely an offence contrary to section of the Ordinance (Cap.); and
 - (ii) for believing that the sample will tend to confirm or disprove the involvement of the said person; and
- (c) the appropriate consent has been duly given.

You are herewith approved to take the urine sample from the said person.

Dated this day of (year).

.....
Magistrate

[L. S.]

*Delete whichever is inapplicable.".

PART III

AMENDMENTS TO THE INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE

4. Sections added

The Independent Commission Against Corruption Ordinance (Cap. 204) is amended by adding -

"10E. Taking of non-intimate samples

(1) In any investigation in respect of an offence committed or believed to have been committed, a non-intimate sample may be taken from a person with or without his consent for forensic analysis only if -

- (a) that person is dealt with and detained pursuant to section 10A; and
- (b) an officer of the rank of Senior Commission Against Corruption Officer or above ("authorizing officer") authorizes it to be taken.

(2) An authorizing officer may only give an authorization as required under subsection (1) (b) if he has reasonable grounds -

- (a) for suspecting the involvement of the person from whom the non-intimate sample is to be taken in a serious arrestable offence; and
 - (b) for believing that the sample will tend to confirm or disprove the involvement of that person.
- (3) An authorizing officer may give an authorization pursuant to subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.
- (4) Where an authorization has been given pursuant to subsection (2), an officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken -
- (a) of the nature of the offence in which the person is suspected to have been involved;
 - (b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the involvement of that person;
 - (c) of the giving of the authorization;
 - (d) that he may or may not consent to the taking of the sample;
 - (e) that if he does not consent to the taking of the sample, the sample will still be taken from him by using reasonable force if necessary;
 - (f) that the sample will be analyzed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such

offence or any other offence for which a person may be arrested under section 10;

- (g) that he may make a request to an officer of the rank of Senior Commission Against Corruption Officer or above for access to the information derived from the analysis of the sample; and
- (h) that if he is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) of the Police Force Ordinance (Cap. 232) and may be used for the purposes specified in subsection (2) of that section.

(5) Any consent given for the taking of a non-intimate sample pursuant to this section must be given in writing and signed by the person giving the consent.

(6) A non-intimate sample from a person may only be taken by -

- (a) a registered medical practitioner; or
- (b) an officer, or a public officer working in the Government Laboratory, who has received training for the purpose.

(7) An officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample from a person pursuant to this section.

(8) In this section, sections 10F and 10G -
"DNA" means deoxyribonucleic acid;

"DNA information" (DNA 資料) means genetic information derived from the forensic DNA analysis of an intimate sample or a non-intimate sample;

"intimate sample" (體內樣本) means -

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person's body orifice other than the mouth or from a private part of a person's body;

"non-intimate sample" (非體內樣本) means -

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part other than a private part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) an impression of any part of a person's body other than the identifying particulars described in section 59(6) of the Police Force Ordinance (Cap. 232);

"private part" (私處) in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman;

"serious arrestable offence" (嚴重的可逮捕罪行) means an offence for which a person may be arrested under section 10 and for which

a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 5 years.

10F. Limitations on use of samples and results of forensic analysis

(1) No person shall use a non-intimate sample taken pursuant to section 10E except for the purposes of -

- (a) forensic analysis in the course of an investigation of any offence for which a person may be arrested under section 10; or
- (b) any proceedings for any such offence.

(2) No person shall use the results of forensic analysis of a non-intimate sample taken pursuant to section 10E except -

- (a) for the purposes of -
 - (i) forensic comparison and interpretation in the course of an investigation of any offence for which a person may be arrested under section 10; or
 - (ii) any proceedings for such an offence; or
- (b) for the purposes of section 59G(1) and (2) of the Police Force Ordinance (Cap. 232) where the results are of forensic DNA analysis.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

10G. Disposal of samples and records

- (1) The Commissioner shall take reasonable steps to ensure that -
 - (a) a non-intimate sample taken pursuant to section 10E; and
 - (b) a record to the extent that it contains information about the sample and particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,

which may be retained by him or on his behalf are destroyed as soon as practicable after -

- (i) if the person has not been charged with any offence for which a person may be arrested under section 10, the expiry of -
 - (A) subject to subparagraph (B), 12 months from the date on which the sample was taken("the relevant period"); or
 - (B) such further period or periods as may be extended under subsection (2) ("the extended period");
- (ii) if the person has been charged with one or more offences for which a person may be arrested under section 10 within the relevant period and the extended period, if any -
 - (A) the charge or all the charges, as the case may be, is or are withdrawn;

- (B) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or
 - (C) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,
- whichever occurs first.

(2) An officer of the rank of Assistant Director of the Commission Against Corruption or above may extend or further extend the relevant period for not more than 6 months for each extension if he is satisfied on reasonable grounds that it is necessary to the continuing investigation of the offence or offences in relation to which the sample was taken that the sample and the record concerned be retained.

(3) Subsection (1) shall not affect any DNA information which has already been permanently stored in the DNA database pursuant to section 59G(1) (a), (b) or (c) of the Police Force Ordinance (Cap. 232).

(4) Without prejudice to the operation of subsections (1) and (2), if a person from whom a non-intimate sample has been taken pursuant to section 10E is convicted of one or more offences for which a person may be arrested under section 10, then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction."

PART IV
AMENDMENTS TO THE POLICE FORCE ORDINANCE

5. Interpretation

Section 3 of the Police Force Ordinance (Cap. 232) is amended by adding -

""appropriate consent" (適當的同意) means -

- (a) in relation to a person who has attained the age of 18 years, the consent of that person;
- (b) in relation to a person who has not attained the age of 18 years, the consent both of that person and of his parent or guardian;

"DNA" means deoxyribonucleic acid;

"DNA information" (DNA 資料) means genetic information derived from the forensic DNA analysis of an intimate sample or a non-intimate sample;

"Independent Commission Against Corruption" (總督特派廉政專員公署) means the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);

"intimate sample" (體內樣本) means -

- (a) a sample of blood, semen or any other tissue fluid, urine or public hair;
- (b) a dental impression;
- (c) a swab taken from a person's body orifice other than the mouth or from a private part of a person's body;

"non-intimate sample" (非體內樣本) means -

- (a) a sample of hair other than public hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part other than a private part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) an impression of any part of a person's body other than the identifying particulars described in section 59(6);

"private part" (私處) in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman;

"registered dentist" (註冊牙醫) has the same meaning as it has in the Dentist Registration Ordinance (Cap. 156);

"serious arrestable offence" (嚴重的可逮捕罪行) means an offence for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 5 years."

6. Sections added

The following are added -

"59A. Intimate samples

(1) In any investigation in respect of an offence committed or believed to have been committed, an intimate sample may be taken from a person for forensic analysis only if -

- (a) a police officer of or above the rank of superintendent ("authorizing officer") authorizes it to be taken;
 - (b) the appropriate consent is given; and
 - (c) a magistrate gives approval under section 59B for it to be taken.
- (2) An authorizing officer may only give an authorization as required under subsection (1) (a) if he has reasonable grounds -
- (a) for suspecting the involvement of the person from whom the intimate sample is to be taken in a serious arrestable offence; and
 - (b) for believing that the sample will tend to confirm or disprove the involvement of that person.
- (3) An authorizing officer may give an authorization pursuant to subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.
- (4) Where an authorization has been given pursuant to subsection (2), a police officer may request the person from whom the intimate sample is to be taken and that person's parent or guardian if he is under the age of 18 years, to give the appropriate consent to the taking of the sample and the police officer, in making the request, shall inform the person and his parent or guardian, as the case may be -
- (a) of the nature of the offence in which the person is suspected to have been involved;

- (b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the involvement of that person;
 - (c) that he may or may not give his consent to the taking of the sample;
 - (d) that if he consents to the taking of the sample, he may at any time withdraw that consent before the sample is taken;
 - (e) that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence;
 - (f) that he may make a request to a police officer of or above the rank of superintendent for access to the information derived from the analysis of the sample; and
 - (g) that if the person is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section.
- (5) The appropriate consent must be given in writing and signed by the person or persons giving the consent.
- (6) An intimate sample -
- (a) of urine may only be taken from a person by a police officer of the same sex as that person;

- (b) of a dental impression may only be taken from a person by a registered dentist;
- (c) other than urine or dental impression, may only be taken from a person by a registered medical practitioner.

59B. Magistrate's approval for the taking of intimate samples

Where an authorization and the appropriate consent as required under section 59A(1) (a) and (b) have been given, a police officer shall make an application to a magistrate in accordance with Schedule 2 for the magistrate's approval as required under section 59A(1) (c) and the magistrate may give his approval in accordance with that Schedule.

59C. Non-intimate samples

(1) In any investigation in respect of any offence committed or believed to have been committed, a non-intimate sample may be taken from a person with or without his consent for forensic analysis only if -

- (a) that person is in police detention or is in custody on the authority of a magistrate or court; and
- (b) a police officer of or above the rank of superintendent ("authorizing officer") authorizes it to be taken.

(2) An authorizing officer may only give an authorization as required under subsection (1) (b) if he has reasonable grounds -

- (a) for suspecting the involvement of the person from whom the non-intimate sample is to be taken in a serious arrestable offence; and
 - (b) for believing that the sample will tend to confirm or disprove the involvement of that person.
- (3) An authorizing officer may give an authorization pursuant to subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.
- (4) Where an authorization has been given pursuant to subsection (2), a police officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken -
- (a) of the nature of the offence in which the person is suspected to have been involved;
 - (b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the involvement of that person;
 - (c) of the giving of the authorization;
 - (d) that he may or may not consent to the taking of the sample;
 - (e) that if he does not consent to the taking of the sample, the sample will still be taken from him by using reasonable force if necessary;
 - (f) that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence;

- (g) that he may make a request to a police officer of or above the rank of superintendent for access to the information derived from the analysis of the sample; and
 - (h) that if he is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section.
- (5) Any consent given for the taking of a non-intimate sample pursuant to this section must be given in writing and signed by the person or persons giving the consent.
- (6) A non-intimate sample may only be taken by -
- (a) a registered medical practitioner; or
 - (b) a police officer, or a public officer working in the Government Laboratory, who has received training for the purpose.
- (7) A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample from a person pursuant to this section.

59D. Limitations on use of samples and results of forensic analysis

- (1) No person shall use an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except for the purposes of -

- (a) forensic analysis in the course of an investigation of any offence;
or
 - (b) any proceedings for any such offence.
- (2) No person shall use the results of forensic analysis of an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except -
- (a) for the purposes of -
 - (i) forensic comparison and interpretation in the course of an investigation of any offence; or
 - (ii) any proceedings for such an offence; or
 - (b) in case the results are of forensic DNA analysis, for the purposes of section 59G(1) and (2).
- (3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

59E. Non-intimate samples of swabs from the mouths of convicted persons

- (1) Where a person -
 - (a) has been convicted of a serious arrestable offence on or after the commencement of this section; and
 - (b) either -
 - (i) has not had an intimate sample or a non-intimate sample taken from him before the conviction; or
 - (ii) has had an intimate sample or a non-intimate sample taken from him before the

conviction but the sample was destroyed under section 59H(1) or (4) or section 10G(1) or (4) of the Independent Commission Against Corruption Ordinance (Cap. 204),

then a police officer of the rank of superintendent or above may authorize the taking of a non-intimate sample of a swab from the mouth of the person for the purposes of section 59G(1) and (2).

(2) Where an authorization has been given under subsection (1), a police officer shall, before the taking of a non-intimate sample of a swab from the mouth, inform the person from whom the sample is to be taken -

- (a) of the giving of the authorization;
- (b) of the grounds for giving it;
- (c) that any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section; and
- (d) that the person may make a request to a police officer of or above the rank of superintendent for access to the DNA information derived from the sample.

(3) A non-intimate sample of a swab from the mouth of a person may only be taken by a police officer who has received training for the purpose.

(4) A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a

non-intimate sample of a swab from the mouth of a person pursuant to this section.

59F. Non-intimate samples given voluntarily

- (1) Any person who has attained the age of 18 years may voluntarily give an authorization to a police officer of the rank of superintendent or above -
 - (a) for the taking of a non-intimate sample from him ("volunteer");
 - (b) for the storage of DNA information derived from the sample in the DNA database maintained under section 59G(1); and
 - (c) for the use of the DNA information for the purposes specified in section 59G(2).
- (2) An authorization given under subsection (1) must be in writing and signed by the volunteer.
- (3) A police officer of the rank of superintendent or above may accept the authorization given under subsection (1).
- (4) A non-intimate sample may only be taken from a person by -
 - (a) a registered medical practitioner; or
 - (b) a police officer, or a public officer working in the Government Laboratory, who has received training for the purpose.
- (5) Where a non-intimate sample is taken from a volunteer pursuant to this section, the volunteer may, at any time by notice in writing to the Commissioner, withdraw his authorization given for the purposes referred to in subsection (1)(b) and (c).

59G. DNA database

(1) There shall be maintained (whether in computerized form or otherwise), by the Government Chemist on behalf of the Commissioner, a DNA database storing DNA information derived from an intimate sample or a non-intimate sample taken from a person pursuant to -

- (a) section 59A or 59C if the person has been subsequently convicted of any serious arrestable offence;
- (b) section 10E of the Independent Commission Against Corruption Ordinance (Cap. 204) if the person has been subsequently convicted of any serious arrestable offence;
- (c) section 59E; or
- (d) section 59F.

(2) No person shall -

- (a) have access to any information stored in the DNA database; or
- (b) disclose or use any such information,

except to the extent necessary for the purposes of -

- (i) forensic comparison with any other DNA information in the course of an investigation of any offence by a police officer or an officer of the Independent Commission Against Corruption; or
- (ii) producing evidence in respect of the DNA information in any proceedings for any such offence;

- (iii) making the information available to the person to whom the information relates; or
 - (iv) administering the DNA database.
- (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

59H. Disposal of samples and records, etc.

- (1) The Commissioner shall take reasonable steps to ensure that -
- (a) an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C; and
 - (b) a record to the extent that it contains information about the sample and particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,
- which may be retained by him or on his behalf are destroyed as soon as practicable after -
- (i) if the person has not been charged with any offence, the expiry of -
 - (A) subject to subparagraph (B), 12 months from the date on which the sample was taken ("the relevant period");
 - (B) such further period or periods as may be extended under subsection (2) ("the extended period");

- (ii) if the person has been charged with one or more offences within the relevant period and the extended period, if any -
 - (A) the charge or all the charges, as the case may be, is or are withdrawn;
 - (B) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or
 - (C) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,whichever occurs first.

(2) A police officer of or above the rank of chief superintendent may extend or further extend the relevant period for not more than 6 months for each extension if he is satisfied on reasonable grounds that it is necessary to the continuing investigation of the offence or offences in relation to which the sample was taken that the sample and the record concerned be retained.

(3) Subsection (1) shall not affect any DNA information which has already been permanently stored in the DNA database pursuant to section 59G(1) (a), (b) or(c).

(4) Without prejudice to the operation of subsections (1) and (2), if a person from whom an intimate sample or a non-intimate has been taken pursuant to section 59A or 59C is convicted of one or more offences, then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his

behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.

(5) Where a non-intimate sample of a swab was taken from the mouth of a person pursuant to section 59E and his conviction of the relevant serious arrestable offence has been subsequently quashed on appeal other than an order of re-trial, the Commissioner shall take reasonable steps to ensure that any DNA information derived from the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conviction is quashed.

(6) The Government Chemist, whilst maintaining the DNA database under section 59G(1), shall take reasonable steps to ensure that every non-intimate sample taken pursuant to section 59E or 59F is retained only for as long as is necessary to enable DNA information to be obtained from the sample, and is then destroyed.

(7) Where a non-intimate sample is taken from a person pursuant to section 59F and that person subsequently serves a notice to the Commissioner under subsection (5) of that section, the Commissioner shall take reasonable steps to ensure -

- (a) in case the sample has not been analysed, that the sample is destroyed as soon as practicable;
- (b) in case the sample has been analysed but DNA information derived from the sample has not been stored in the DNA database pursuant to section 59G(1) (d), that the DNA information is destroyed as soon as practicable;

(c) in case DNA information derived from the sample has been stored in the DNA database pursuant to section 59G(1) (d), that the DNA information is removed from the DNA database and destroyed as soon as practicable, after the Commissioner receives the notice.

59I. Amendment of Schedule 2

The Chief Executive in Council may by order published in the Gazette amend Schedule 2."

7. Oath or Declaration of Office

The Schedule is renumbered as Schedule 1.

8. Schedule added

The following is added -

"SCHEDULE 2

[ss. 59B & 59I]

APPLICATION FOR AND GIVING OF A MAGISTRATE'S
APPROVAL FOR THE TAKING OF INTIMATE SAMPLES

1. An application under section 59B of this Ordinance must be made in Form 1. A copy of the authorization duly given pursuant to section 59A(2) of this Ordinance and of appropriate consent duly given and signed under section 59A(5) of this Ordinance must be exhibited to Form 1.
2. Form 1 together with the exhibits referred to in section 1 must be submitted to a magistrate.
3. A magistrate, on receiving the application, may -

- (a) give his approval if he is satisfied that -
 - (i) an authorization has been duly given pursuant to section 59A(2) of this Ordinance;
 - (ii) there are reasonable grounds -
 - (A) for suspecting the involvement of the person from whom the intimate sample is to be taken in a serious arrestable offence; and
 - (B) for believing that the sample will tend to confirm or disprove the involvement of that person; and
 - (iii) the appropriate consent has been duly given under section 59A(5) of this Ordinance;
 - (b) order that an inter partes hearing shall be conducted in private for the purposes of determining whether the approval should be given or not if he considers that it is necessary in the interest of justice to do so; or
 - (c) reject the application if he thinks fit to do so.
4. An order made under section 3(b) must specify a hearing date and must be served on the applicant and the respondent not less than 3 days before the specified hearing date.
5. Where an order has been duly served under section 4, the applicant and the respondent must attend before the magistrate on the hearing date specified in the order. The respondent may be represented by his legal representative. The applicant

and the respondent (or his legal representative, if any) may make representations at the hearing.

6. The magistrate, upon hearing the parties, may -
 - (a) give his approval if he is satisfied that -
 - (i) an authorization has been duly given pursuant to section 59A(2) of this Ordinance;
 - (ii) there are reasonable grounds -
 - (A) for suspecting the involvement of the person from whom the intimate sample is to be taken in a serious arrestable offence; and
 - (B) for believing that the sample will tend to confirm or disprove the involvement of that person; and
 - (iii) the appropriate consent has been duly given under section 59A(5) of this Ordinance; or
 - (b) reject the application if he thinks fit to do so.
7. The approval under sections 3(a) and 6(a) must be given in Form 2.

FORM 1

APPLICATION FOR AN APPROVAL FOR THE TAKING
OF AN INTIMATE SAMPLE

Section 59B of the Police Force
Ordinance (Cap. 232)

Application No.
Writ No.

TO A MAGISTRATE OF HONG KONG
IN THE MAGISTRATES COURT AT.....

I, (name of the applicant), apply for an approval to the taking of an intimate sample, namely, from (name of the suspect) on the following grounds -

(a), a police officer of the rank of superintendent or above on (date) has given an authorization (which is exhibited to this form) to the taking of the sample from the said person as he has reasonable grounds -

(i) for suspecting the involvement of the said person in a serious arrestable offence, namely an offence contrary to section of the Ordinance (Cap.);
and

(ii) for believing that the sample will tend to confirm or disprove the involvement of the said person,
relying on the following facts-

(b) the appropriate consent has been given (which is exhibited to this form).

Dated this day of (year).

.....
Applicant.
(signature)

FORM 2

APPROVAL FOR THE TAKING OF AN INTIMATE SAMPLE

Section 59B of the Police Force
Ordinance (Cap. 232)

Application No.
Writ No.

HONG KONG. IN THE MAGISTRATES COURT AT.....

To each and all of the police officers of Hong Kong.

APPLICATION has been made to the undersigned, a magistrate of Hong Kong,
by (name of the applicant)
on (date) and the undersigned magistrate, relying on the facts
specified in the said application upon hearing the parties
on (date)* has satisfied that -

- (a), a police officer of the rank of superintendent or above on (date) has duly given an authorization to the taking of an intimate sample, namely from (name of the suspect);
- (b) there are reasonable grounds -
 - (i) for suspecting the involvement of the said person in a serious arrestable offence, namely an offence contrary to section of the Ordinance (Cap.) ; and
 - (ii) for believing that the sample will tend to confirm or disprove the involvement of the said person; and
- (c) the appropriate consent has been duly given.

You are herewith approved to bring the said person to a registered medical practitioner/registered dentist* for the intimate sample, namely, to be taken from him/take the intimate sample namely from the said person*.

Dated this day of (year).

.....
Magistrate

[L.S.]

*Delete whichever is inapplicable. "

Explanatory Memorandum

The object of this Bill is to amend the Dangerous Drugs Ordinance (Cap. 134), the Independent Commission Against Corruption Ordinance (Cap. 204) and the Police Force Ordinance (Cap. 232) by making provisions in respect of the taking of intimate and non-intimate samples from individuals. (See the definitions of "intimate sample" and "non-intimate sample" in new section 10E(8) at clause 4 and amended section 3 at clause 5).

Dangerous Drugs Ordinance (Cap. 134)

2. Clause 2 adds the following provisions -
 - (a) new section 54AA to provide for, inter alia, the power to take urine samples from suspects under certain conditions;
 - (b) new section 54AB to specify the use and disposal of urine samples; and
 - (c) new section 54AC to empower the Chief Executive in Council to amend the Seventh Schedule.
3. Clause 3 adds a new Seventh Schedule to provide for the procedure of application to, and the giving of approval by, a magistrate for the taking of urine samples.

Independent Commission Against Corruption Ordinance (Cap. 204)

4. Clause 4 adds the following provisions-
 - (a) new section 10E to provide for, inter alia, the power to take non-intimate samples from suspects under certain conditions;

- (b) new section 10F to set out limitations on the use of samples and results of forensic analysis; and
- (c) new section 10G to specify the disposal of samples and records.

Police Force Ordinance (Cap. 232)

- 5. Clause 5 defines the terms used in the new provisions added.
- 6. Clause 6 adds the following provisions -
 - (a) new section 59A to provide for, inter alia, the power to take intimate samples from suspects under certain conditions;
 - (b) new section 59B to provide for applications for a magistrate's approval for the taking of intimate samples;
 - (c) new section 59C to provide for, inter alia, the power to take non-intimate samples from suspects under certain conditions;
 - (d) new section 59D to set out limitations on the use of intimate samples and non-intimate samples and results of forensic analysis;
 - (e) new section 59E to provide for, inter alia, the power to take non-intimate samples from persons who have been convicted of serious arrestable offences on or after the commencement of the Bill;
 - (f) new section 59F to provide for the power to accept non-intimate samples given voluntarily by any non-suspects;

- (g) new section 59G to provide for the maintaining of a DNA database and set out limitations on the access, disclosure and use of the DNA information stored in the database;
- (h) new section 59H to specify the disposal of samples and records; and
- (i) new section 59I to empower the Chief Executive in Council to amend Schedule 2.

7. Clause 7 is a consequential amendment.
8. Clause 8 adds a new Schedule 2 to provide for the procedure of application to, and the giving of approval, by a magistrate for the taking of intimate samples.