

**A Note for the 3rd the Bills Committee on the
Dangerous Drugs, ICAC and
Police Force (Amendment) Bill 1999
to be held at 10:45 a.m. on 2 February 2000 (Wednesday)**

**Justifications and rationale for ICAC officers
to take non-intimate samples**

PURPOSE

The purpose of this note is to explain to Members why ICAC officers need the power to take non-intimate samples.

BACKGROUND

2 At the 2nd Bills Committee meeting held on 19 January 2000, Members asked for more detailed information on why ICAC officers needed the power to take non-intimate samples.

JUSTIFICATION AND RATIONALE

3 The role of the ICAC is to investigate and combat corruption. It is to investigate any alleged offences under the ICAC Ordinance (Cap. 204), the Prevention of Bribery Ordinance (Cap. 201) and the Corrupt and Illegal Practices Ordinance (Cap. 288). During the course of its investigations, ICAC officers are often required to establish the guilt and innocence of a suspect by, among other things, –

- proving that the suspect was present at a certain place at a certain time;

- proving that the suspect accepted or offered a bribe under certain circumstances; and
- providing corroborative evidence to support the testimony of a witness.

4 Because of its very nature, a corruption offence is very often intertwined with other types of serious offences, particularly organised crime. For instance, a corruption offence may be connected with or related to drug trafficking offences where government officers are bribed to turn a blind eye to drug trafficking activities. ICAC officers are therefore required to investigate a suspect's involvement in another offence in order to establish the corruption offence.

5 In carrying out the work described in paragraph 3 above, it is common for ICAC officers, like other law enforcement officers, to use identification parade and other forensic examination methods to investigate alleged corruption offences and related offences. It would therefore be important that ICAC officers be given adequate power to investigate and detect corruption offences and corruption-related offences.

6 The ICAC had in the past sought police assistance in obtaining, for instance, fingernail clippings from a suspect who was involved in drug trafficking activities allegedly protected by corrupt police officers. The ICAC has to rely on police assistance because it does not have the power to take such non-intimate samples but a police officer not below the rank of inspector can authorise the taking of finger nail sample for chemical tests under section 54(1) of the Dangerous Drugs Ordinance (Cap. 134). While the ICAC may continue to rely on the police for taking non-intimate samples

from suspects, this arrangement is unsatisfactory. The ICAC, as an independent law enforcement agency, should operate independently and it should have the power to handle its own cases, in particular in cases where public officers of other Government departments are suspected to be involved.

RELEVANT PAST CASES

7 The importance of DNA evidence to ICAC enquiries can be illustrated by the following past cases -

- In an undercover operation, an ICAC undercover officer posing as an officer of the Television and Entertainment Licensing Authority received bribes contained in sealed envelopes from amusement game centre operators and middlemen. The persons offering bribes were subsequently convicted on the testimony of the undercover officer. In such a case, the power to take non-intimate samples by ICAC officers from suspects to cross-check with the DNA information obtained from saliva on the sealed envelope would be useful in proving the link of the bribe money to the suspects.
- In a corruption investigation, an ICAC witness was murdered. A pair of trousers having a patch of red stain, which was suspected to be a blood stain, was found in the possession of the suspect. Subsequent forensic examination determined that the stain was not from blood sample. However, if the stain were found to be blood sample and if it was suspected that the stain

might have come from the victim and / or the suspect during a struggle between the two prior to the murder, DNA profiling on the suspect and comparison of the result with the DNA information obtained from the blood-stain would then help establish whether the suspect was involved in the case.

- In another case, a police officer was alleged to have accepted a bribe from a rapist to tamper with the latter's blood sample sent to the Government Laboratory. Enquiries revealed that the blood sample had not been interfered with and there was no evidence of any corruption offence. However, if irregularities were discovered concerning the blood sample (for instance, a sample of hair was left on the packaging material containing the blood sample), it might have been necessary for ICAC officers to compare the DNA profiling result of the hair with that of a non-intimate sample taken from the suspected corrupt police officer. Furthermore, it might be necessary to take non-intimate sample from the suspected rapist if the blood-sample was discovered to have been swapped by the corrupt police officer. This would have been necessary as part of the corruption investigation in order to ascertain whether the police officer concerned was indeed involved in tampering with the blood sample.

8 To ensure that the power to take non-intimate samples would not be abused, the ICAC will promulgate stringent internal regulations to govern the exercise of this power.

ADVICE SOUGHT

9 Members are invited to note the content of this paper.

Security Bureau
January 2000

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