

**A note for the 20th Bills Committee meeting on
Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999**

**Draft Committee Stage Amendments (III)
to be moved by the Administration**

The Bills Committee has considered the draft CSAs proposed by the Administration at its last meeting on 13 June 2000. In view of Members' comments, some additional CSAs are proposed and summarised below -

- (a) the term "dispose of" will be included in the provisions governing the use of sample; [Clauses 2(b)(i), 4(a)(i) and 6(c)(i)];
- (b) an impression of a face will be excluded from the definition of non-intimate sample; [Clauses 5(a)(ii)(c) and 4(a)(iv)(B)(III)];
- (c) the "other charge" mentioned in clauses 2(b)(v), 4(c) and 6(g)(ii), which relate to destruction of sample, will be qualified as the charge for which the retention of sample is necessary [Clauses 2(b)(v), 4(c) and 6(g)(ii)];
- (d) section 59E of the Police Force Ordinance will be amended to the effect that taking of non-intimate sample from a convicted person will be allowed only within the 12 months after the person has been convicted of a serious arrestable offence [Clauses 6(d)(ii)];
- (e) amendment of the Schedules will be subject to positive vetting by the Legislative Council [Clauses 2(c) and 6(h)]; and
- (f) section 4 of the Schedule on the procedures for seeking judicial authorisation under Dangerous Drug Ordinance and Police Force Ordinance will be amended so that the magistrate may direct the period before which the order on hearing should be served [Clauses 3 and 8].

2. Members are invited to comment on the draft CSAs at Annex.

Security Bureau

14 June 2000

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1st working draft: 14.2.2000

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3rd working draft: 31.5.2000

1st draft: 1.6.2000

1st (revised) draft: 1.6.2000

2nd draft: 5.6.2000

3rd draft: 7.6.2000

4th draft: 12.6.2000

5th draft: 13.6.2000

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

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

- 2
- (a) In the proposed section 54AA -
- (i) by deleting subsection (3) and substituting -
- “(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.”;
- (ii) by deleting subsection 94)(f) and substituting -
- “(f) that he may make a request to a police officer or a member of the Customs and Excise service for access to the

information derived from the sample.”;

(iii) by adding the following after subsection (4)-

“(4A) The person from whom a urine sample was taken pursuant to subsection (1) is entitled to access to the information derived from the sample.”;

(iv) in subsection (8), in the definition of “serious arrestable offence”, by deleting “5” and substituting “7”.

(b) In the proposed section 54AB -

(i) in subsection (1), by deleting “No person shall” and substituting “Without prejudice to subsection (3A), no person shall have access to, dispose of or”;

(ii) by deleting subsection (2) and substituting -

“(2) Without prejudice to subsection (3A), no person shall have access to, disclose or use any information derived from the forensic analysis of a urine sample taken pursuant to section 54AA except for the purposes of -

(a) any proceedings for an offence in relation to dangerous drugs; or

(b) making the information

available to the person to whom the information relates. “;

(iii) by adding -

“(3A) Whether or not a urine sample taken pursuant to section 54AA or any information derived from the forensic analysis of the sample has been destroyed under subsection (4), no person shall use the sample or information in any proceedings for an offence in relation to dangerous drugs after -

(a) it is decided that a person from whom the sample was taken shall not be charged with any offence in relation to dangerous drugs;

(b) if the person has been charged with one or more such offences -

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

(ii) the person is discharged by a

court before conviction of the
offence or all the offences, as
the case may be; or

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

whichever occurs first.”;

- (iv) in subsection (4) (i) (A), by adding “or” at the end;
- (v) by deleting subsection (6) and substituting -

“(6) Without prejudice to the operation of
subsections (4) and (5), if -

- (a) a person from whom a urine sample was
taken pursuant to section 54AA has
been convicted of one or more offences
in relation to dangerous drugs; and

(b) there is no other charge against the person

-

(i) in relation to dangerous drugs;

and

(ii) which renders the retention of the

sample necessary,

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.”.

(c) The proposed section 54AC is amended by adding “but any order to amend the Schedule shall be subject to the approval of the Legislative Council” after “Schedule”.

3 Section 4 of the proposed Seventh Schedule is amended by deleting “3 days” and substituting “a period as may be directed by the magistrate”.

4

(a) In the proposed section 10E -

(i) by deleting subsection (3) and substituting -

“(3) An authorizing officer -

(a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;

(b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.”;

(ii) by deleting subsection (4) (g) and substituting -

“(g) that he may make a request to an officer for access to the information derived from the analysis of the sample; and”;

(iii) by adding the following after subsection (4) -

“(4A) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.”;

(iv) in subsection (8) -

(A) in the definition of “intimate sample” -

(I) by deleting paragraph (a) and substituting -

“(a) a sample of blood, semen or any other
tissue fluid, urine or hair other than head
hair;”;

(II) by deleting paragraph (c) and substituting -

“(c) a swab taken from a private part of a
person’s body or from a person’s body
orifice other than the mouth;”;

(B) in the definition of “non-intimate sample” -

(I) by deleting paragraph (a) and substituting -

“(a) a sample of head hair;”;

(II) by deleting paragraph (c) and substituting -

“(c) a swab taken from any part, other than a
private

part, of a person's body or from the mouth

but not any other body orifice;”;

(III) by deleting paragraph (e) and substituting -

“(e) an impression of any part of a person's

body other than -

(i) an impression of a private

part;

(ii) an impression of the face; or

(iii) the identifying particulars

described in section 59(6) of

the Police Force Ordinance

(Cap. 232);”;

(C) in the definition of “serious arrestable offence”,

by deleting “5” and substituting “7”.

(b) In the proposed section 10F -

(i) in subsection (1), by deleting “No person shall” and substituting “Without prejudice to subsection (3A), no person shall have access to, dispose of or”;

(ii) by deleting subsection (2) and substituting -

“(2) Without prejudice to subsection (3A), no person shall have access to, disclose or 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 investigation of any offence for which a person may be arrested under section 10;

(ii) any proceedings

for such an offence; or

(iii) making the results available to the person to whom the results relate; 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.”.

(iii) by adding -

“(3A) Whether or not a non-intimate sample taken pursuant to section 10E or the results of forensic analysis of the sample has been destroyed under section 10G, no person shall use the sample or results in any proceedings for an offence for which a person may be arrested under section 10 after -

(a) it is decided that a person from whom the sample was taken shall not be charged with any offence for which a

person may be arrested under section

10;

(b) if the person has been charged with

one or more such offences -

(i) the charge or all the

charges, as the case may

be, is or are withdrawn;

(ii) the person is discharged by

a court before conviction

of the offence or all the

offences, as the case may

be; or

(iii) the person is acquitted of

the offence or all the

offences, as the case may

be, at trial or on appeal,

whichever occurs first.”;

(c) By deleting the proposed section 10G(4) and substituting -

“(4) Without prejudice to the operation of subsections (1) and (2), if -

(a) a person from whom a non-intimate sample was taken pursuant to section 10E has been convicted of one or more offences for which a person may be arrested under section 10; and

(b) there is no other charge against the person -

(i) in relation to an offence which a person may be arrested under section 10; and

(ii) which renders the retention of the sample necessary,

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.”.

(i) in the proposed definition of “intimate sample” -

(A) by deleting paragraph (a) and substituting -

“(a) a sample of blood, semen or any other
tissue fluid, urine or hair other than
head hair;”;

(B) by deleting paragraph (c) and substituting -

“(c) a swab taken from a private part of a
person’s body or from a person’s body
orifice other than the mouth;”;

(ii) in the proposed definition of “non-intimate sample” -

(A) by deleting paragraph (a) and substituting -

“(a) a sample of head hair;”;

(B) by deleting paragraph (c) and substituting -

“(c) a swab taken from any part, other than
a private part, of a person’s body or
from the mouth but not any other body
orifice;”;

(C) by deleting paragraph (e) and

substituting -

“(e) an impression of any part of a person’s

body other than -

(i) an impression of a private
part;

(ii) an impression of the face;
or

(iii) the identifying particulars
described in section
59(6);”;

(iii) by deleting the proposed definition of “serious arrestable
offence” and substituting -

““serious arrestable offence” (嚴重的可逮捕罪行)

means -

(a) an offence for which a person may under
or by virtue of any law be sentenced to
imprisonment for a term not less than 7
years; or

(b) any other offence specified in Schedule
1A.”.

New

By adding -

“5A. Declaration of office

Section 26 is amended by repealing “the Schedule” and
substituting “Schedule 1”.”.

6 (a) In the proposed section 59A -

(i) by deleting subsection (3) and substituting -

“(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.”;

(ii) in the Chinese text, in subsection (4)(e), by adding “或任何其他罪行” after “罪行” ;

(iii) by deleting subsection (4)(f) and substituting -

“(f) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and”;

(iv) by adding the following after subsection (4) -

“(4A) The person from whom an intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.”;

(b) In the proposed section 59C -

(i) in subsection (1)(a), by deleting “magistrate or”;

(ii) by deleting subsection (3) and substituting -

“(3) An authorizing officer -

(a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;

(b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.”;

(iii) by deleting subsection (4)(g) and substituting -

“(g) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and”;

(iv) by adding the following after subsection (4) -

“(4A) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.”;

(c) In the proposed section 59D -

(i) in subsection (1), by deleting “No person shall” and substituting “Without

prejudice to subsection (4), no person shall have access to, dispose of or”;

(ii) by deleting subsection (2) and substituting -

“(2) Without prejudice to subsection (4), no person shall have access to, disclose or 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 investigation of any offence;

(ii) any proceedings for such an offence; or

(iii) making the results available to the person to whom the results relate; or

(b) for the purposes of section 59G(1) and (2) where the results are of forensic DNA analysis.”.

(iii) by adding -

“(4) Whether or not an intimate or a non-intimate sample taken pursuant to

section 59A or 59C or the results of forensic analysis of the sample has been destroyed under section 59H, no person shall use the sample or results in any proceedings after -

(a) it is decided that a person from whom the sample was taken shall not be charged with any offence;

(b) if the person has been charged with one or more such offences -

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

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

(iii) 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) Whether or not a non-intimate sample taken pursuant to section 59F or DNA information derived from the sample has been destroyed under section 59H(7), no person shall use the sample or information in any proceedings after the Commissioner receives a notice served under section 59F(5).”; “.

(d) In the proposed section 59E -

(i) by deleting subsection (2)(d) and substituting -

“(d) that the person may make a request to a police officer for access to the DNA information derived from the sample.”;

(ii) by adding -

“(5) The person from whom a non-intimate sample of a swab from the mouth was taken pursuant to subsection

(1) is entitled to access to the DNA information derived from the sample.

(6) A non-intimate sample of a swab from the mouth of a person may only be taken within 12 months after the person has been convicted of a serious arrestable offence.”.

(e) In the proposed section 59F, by adding the following after subsection (3)

-

“(3A) Where an authorization has been given pursuant to subsection (1), a police officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken -

- (a) the DNA information derived from the sample may be stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section;
- (b) that he may make a request to a police officer for access to the information; and
- (c) that he may at any time

withdraw his authorization given for the purposes referred to in subsection (1)(b) and (c).”.

(f) By deleting the proposed section 59G(2)(iv) and substituting -

“(iv) administering the DNA database for the purposes of or connected with any of the following -

(A) paragraph (i), (ii) or (iii) or subsection (1);

(B) section 59H.”.

(g) In the proposed section 59H -

(i) in subsection (1)(i)(A), by adding “or” at the end;

(ii) by deleting subsection (4) and substituting -

“(4) Without prejudice to the operation of subsections (1) and (2), if -

(a) a person from whom an intimate sample or a non-intimate sample was taken pursuant to section 59A or 59C has been convicted of one or more offences; and

(b) there is no other charge

against the person in relation to an offence which renders the retention of the sample necessary,

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.”.

(h) By deleting the proposed section 59I and substituting -

“59I. Amendment of Schedules 1A and 2

The Chief Executive in Council may by order published in the Gazette amend Schedule 1A or 2 but any order to amend any Schedule shall be subject to the approval of the Legislative Council.”.

New By adding -

“7A. Schedule added

The following is added -

“SCHEDULE 1A [ss. 3 & 59I]

OFFENCES SPECIFIED AS SERIOUS

ARRESTABLE OFFENCES

Offence

Descriptions*

Crimes

Ordinance

(Cap. 200)

section 24 criminal intimidation

section 25 assault with intent to cause certain
acts to be done or omitted

section 118F homosexual buggery committed
otherwise than in private

section 120 procurement by false pretences

section 124 intercourse with girl under 16

section 132 procurement of girl under 21

*Note: The short description of offences in this Schedule is for
ease of reference only.”.”.

8 Section 4 of the proposed Schedule 2 is amended by deleting “3 days” and
substituting “a period as may be directed by the magistrate.”.