立法會
Legislative Council

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Bills Committee on
Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999

Minutes of meeting
held on Thursday, 6 January 2000 at 4:55 pm
in Conference Room A of the Legislative Council Building

Members present	:	Hon James TO Kun-sun (Chairman) Hon Albert HO Chun-yan Hon Mrs Selina CHOW LIANG Shuk-yee, JP Hon CHENG Kai-nam, JP
Member absent	:	Hon Emily LAU Wai-hing, JP
Public Officers attending	:	Mr Raymond WONG Deputy Secretary for Security 1 Mr Tony LAM Principal Assistant Secretary for Security E (Atg) Mr FUNG Siu-yuen Assistant Commissioner of Police, Crime Hong Kong Police Force Mr YAM Tat-wing Assistant Commissioner of Police, Crime (Des) Hong Kong Police Force

Mr J M H BICKNELL
Chief Superintendent of Police, Crime Support
Hong Kong Police Force

Mr YU Koon-hing
Group Head (Drug Investigation)
Customs Drug Investigation Bureau

Dr LAW Man-yee, Betty
Senior Chemist (Biochemical Sciences B)

Ms Carmen CHU
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Election of Chairman

Mr James TO was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LegCo Brief Ref SBCR 11/2801/88 (98) Pt. 22, LC Paper Nos. LS 15/98-99 and CB(2)765/99-00)

2. At the invitation of the Chairman, Deputy Secretary for Security 1 (DS for S1) briefed members on the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 (the Bill), which sought to provide -

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(a) power for authorized officers of the Hong Kong Police Force (the Police) and the Independent Commission Against Corruption (ICAC) to take body samples from suspects to conduct forensic analysis, including DNA analysis, for crime investigation purpose; and

(b) power for authorized Police and Customs and Excise officers to take urine samples from suspects for investigation of drug-related offences.

Percentage of error and reliability of DNA profiling in forensic analysis and overseas practices

3. Mr Albert HO asked about the percentage of error and reliability of DNA profiling in forensic analysis. He also asked whether the DNA profiling was adopted in other common law jurisdictions and how the Bill compared with similar legislation in other common law jurisdictions. DS for S1 responded that the Bill was moderately stringent in comparison with other common law jurisdictions. It was based on but slightly more stringent than similar legislation in the United Kingdom (UK). In Canada, judicial authorization was required for the taking of various bodily samples irrespective of whether consent was given by the suspect. In Australia and New Zealand, judicial authorization was required when the suspect refused to give consent. Senior Chemist (Biochemical Sciences B) (SC(BSB)) added that the use of DNA profiling in forensic analysis was widely adopted in Europe, the United States and the Mainland. There was no doubt about the reliability of DNA profiling. The percentage of error was in the region of $1/10^{12}$ or $1/10^{13}$. She added that the method of analysis adopted by the Government Laboratory was in compliance with internationally accepted standards. DS for S1 undertook to provide a comparison of the statutory requirements in respect of the taking of intimate and non-intimate samples under the Bill and that in other common law jurisdictions. He said that with the advancement of forensic DNA analysis technology, the methods adopted for obtaining samples had a lesser degree of interference. DNA analysis was becoming increasingly popular in many countries in the investigation of crimes. He informed members that in UK, legislative amendments were being considered to widen the scope of existing legislation on DNA analysis.

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Challenges against DNA analysis in other countries

4. In response to Mr Albert HO's question on whether there had been successful challenges against DNA analysis in other countries, SC(BSB) said that while there had been successful challenges, they were mainly about whether the sample analyzed was a genuine one taken from the crime scene. Assistant Commissioner of Police (Crime) (ACP(C)) said that there were also challenges against possible contamination of the sample collected. Chief Superintendent of Police (Crime Support) (CSP(CS)) added that according to information contained in the web site of Interpol, challenges against DNA profiling could be classified into the following three areas -

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(a) possible contamination of samples;

(b) possible comparison with any inadequate sample size as the basis for probability calculations; and

(c) improper procedure in carrying out DNA analysis.

In explaining item (b), SC(BSB) said that the percentage of error of a DNA sample was calculated using the properties of the race to which the suspect belonged. Using the properties of a wrong race in the calculation of the percentage of error might open the results of an analysis to be challenged in court.

Contamination of samples, tampering and interference with samples for forensic analysis

5. The Chairman asked whether there were provisions in the Bill on the prevention of contamination of samples for forensic analysis. ACP(C) said that the procedure for the taking of DNA samples from crime scenes was not spelt out in the Bill because the taking of samples for DNA analysis was no different from the taking of other samples from crime scenes. SC(BSB) added that the Government Laboratory had received an international accreditation by the American Society of Crime Laboratory Directors (ASCLD) in 1996. Under the international accreditation programme of ASCLD, the Government Laboratory was subject to full-scale inspection of procedures and records etc. by overseas experts once every five years. She added that there were already strict guidelines within the Government Laboratory on the handling of samples for forensic analysis, including DNA analysis. These guidelines encompass a wide range of areas such as exhibit handling and the control, storage and transportation of samples.

6. Mr Albert HO asked whether the procedure for handling and storage of DNA samples would be made as subsidiary legislation. The Chairman considered that there might be a need for legislative provisions in respect of the prevention of tampering of samples for DNA analysis. DS for S1 said that there was currently no provisions in the Bill on the tampering of samples for forensic analysis. However, the Bill had already laid down requirements on access to and disclosure of information stored in the DNA database. The Chairman said that as the results of DNA analysis would constitute a strong evidence, enacting legislation on the tampering of samples might have a deterrent effect on such an act. He requested the Administration to consider the need for imposing criminal liability on persons who deliberately interfered with the samples obtained for DNA analysis and DNA information derived from the samples obtained. Mr CHENG Kai-nam said that there might be a need to enact legislation on the taking and handling of samples for forensic analysis instead of just DNA analysis.

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7. DS for S1 said that any deliberate tampering or interference with evidence in the investigation of crime would be subject to penalties under the criminal offence of "perverting or obstructing the course of justice". He agreed to consider whether to explicitly provide in the Bill that the tampering of samples in forensic analysis should constitute a criminal offence.

Procedures for the taking of samples from crime scenes and the handling of samples for forensic analysis

8. ACP(C) explained that the Police and the Government Laboratory had established guidelines on the taking of samples from crime scenes and the handling of samples for forensic analysis. These were important to the preservation of chain of evidence. SC(BSB) said that under the existing quality control system on the taking and handling of samples for forensic analysis -

(a) all exhibits submitted to the Government Laboratory were stored under lock and/or seal;

(b) the transfer of exhibits was conducted in the presence of two persons, one as issuing officer and the other as the receiving officer. Every movement of exhibits submitted to the laboratory was recorded in full details;

(c) in many cases, the receiving officer was not the actual officer who would conduct the analysis or who would report on the case. Cases were assigned to officers randomly and officers did not choose the cases they handle;

(d) the custody of every exhibit whilst within the laboratory was fully accounted for and traceable. The chance of tampering of evidence was minimized; and

(e) full and detailed records were kept for every test performed on every exhibit and material taken from the exhibit.

9. SC(BSB) said that the Government Laboratory's quality control system on the taking and handling of samples for forensic analysis had been inspected by ICAC, which had not proposed statutory control on the system. DS for S1 invited members to visit the Government Laboratory to understand the stringent procedures adopted in forensic analysis.

10. The Chairman requested the Administration to provide a paper on the procedures on the taking of samples from crime scenes and suspects for forensic analysis and the steps taken to ensure preservation of the chain of evidence.

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Application of forensic analysis on intimate samples

11. In response to Mr Albert HO, SC(BSB) said that there was no difference in the reliability of DNA analysis on intimate and non-intimate samples. She added that legislative provisions on the taking of intimate samples were needed for the following forensic analyses -

(a) comparison of the dental impressions of a suspect with the bite mark on a piece of fruit from a crime scene could offer very strong and sometimes absolute proof of a suspect's involvement in the crime;

(b) there were unsolved crimes for which blood grouping and/or a less advanced DNA technique had previously been used and no crime stain materials remain for further analysis. For these cases, comparison would be restricted to blood groups and the DNA information obtained from less advanced techniques;

(c) hair samples, including pubic hair from different persons, could bear morphological differences. The examination of the morphology of a hair sample included examining its forum and internal parts and was done microscopically. The comparison of a pubic hair recovered from a crime scene with that from a suspect could yield information concerning the likelihood of the suspect being the source of the hair at the scene. Whilst there was no standard for measuring the importance or weight of the evidence, similarities or dissimilarities in the characteristics exhibited by the hairs had corroborative value, especially when the comparison offered exclusion evidence;

(d) in allegations of sexual assaults, a swab taken from a person's private part was useful in establishing whether there had been contact between the suspect's private part with the victim. A male rapist would bear bodily materials from the victim on his genitals. DNA analysis of a swab taken from the suspect's genitals would assist in the investigation of the crime; and

(e) urine samples were required for analysis to establish suspicion on internal concealment of drug by a suspect. The urine test was only a preliminary analysis and the test result would not be used as evidence in court.

12. DS for S1 stressed that an intimate sample would not be obtained from a suspect without his or her consent.

13. The Chairman requested the Administration to provide a paper on the forensic

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analysis of intimate samples and the precision of the results of the respective methods of analysis. He also requested the Administration to explain the meaning of "morphology of hair" in the paper.

Forensic analyses not performed by Government Laboratory

14. In response to Mr Albert HO, SC(BSB) said that apart from the forensic analysis of dental impressions, which were carried out by registered dentists, most forensic analysis were performed by the Government Laboratory. Mitochondrial DNA sequencing analysis would however need to be carried out overseas. While there had not been any case in which such overseas analysis was required, such a possibility could not be ruled out.

Forensic analyses performed at the request of defendants

15. In response to the Chairman, SC(BSB) said that besides performing forensic analysis for Government departments, the Government Laboratory had carried out forensic analyses requested by defendants. She added that the Government Laboratory had a practice of retaining the samples obtained from serious crimes. Requests were sometimes received from defendants for a retest of a sample or providing a sample to another laboratory for analysis. A scale of charges had been established for the provision of such a service to the public. She quoted the example of a robbery and raping case in which a suspect was convicted and imprisoned in 1991, when DNA analysis was not yet in place. A subsequent DNA analysis on the semen on an exhibit of the case revealed that the DNA profile of the person differed from that of the semen found on the exhibit. The person finally succeeded in his appeal against the court's ruling.

Legislation on the taking of samples from the corpse of a victim after the completion of post-mortem examination

16. Mr Albert HO asked whether there was legislative provision on the taking of samples from the corpse of a victim after the completion of post-mortem examination, including when the victim had been buried. DS for S1 undertook to provide a written response on the issue.

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III. Date of next meeting

17. Members agreed that the next meeting would be convened in the following week.

(*Post-meeting note* : The next meeting was subsequently scheduled for 19 January 2000 at 8:30 am.)

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18. There being no other business, the meeting ended at 6:10 pm.

Legislative Council Secretariat
7 March 2000