

**A Note for the 4th Bills Committee on the
Dangerous Drugs, ICAC and
Police Force (Amendment) Bill 1999
to be held on 8.3.2000**

The proposed section 59G(2)(iv) of the Police Force Ordinance

PURPOSE

This note invites Members' comments on an Administration's proposal to narrow down the proposed section 59G(2)(iv) of the Police Force Ordinance (Cap. 232).

BACKGROUND

2 The proposed section 59G(2) of the Police Force Ordinance provides that no person shall have access to any information stored in the DNA database or disclose or use any such information **except** for the specified purposes as follows:

- (i) forensic comparison with any other DNA information in the course of crime investigation by the Police or the ICAC;
- (ii) producing evidence in respect of the DNA information in any proceedings;
- (iii) making the information available to the person to whom the information relates; and
- (iv) administering the DNA database.

3 At the 2nd Bills Committee meeting held on 19 January 2000, Members were concerned that the proposed section 59G(2)(iv) (i.e. "administering the DNA database") might be too broad and risk legitimizing unnecessary access to DNA information and the disclosure and use thereof. Members asked the Administration to consider if the proposed section needed to be narrowed down.

CONSIDERATION

4 We would like to emphasize that any access to, the disclosure and use of DNA information in the DNA database is prohibited **except** for four and only four specified purposes under the proposed section 59G(2). Any person contravening the proposed section 59G(2) commits a **criminal** offence and, if convicted, is liable to a maximum fine of \$25,000 and imprisonment for six months under the proposed section 59G(3).

5 As set out in paragraph 2 above, the DNA database and the DNA information stored therein are primarily for crime investigation; court proceedings purposes and for making the DNA information available to the person to whom it relates.

6 The proposed section 59G(2)(iv) ("administering the DNA database") is, however, also necessary. It is because the DNA database requires regular updating whenever new DNA information needs to be stored therein resulting from convictions of "serious arrestable offences" under the proposed section 59E or resulting from volunteered samples under the proposed section 59F. Similar updating will be required where a voluntary authorization is withdrawn under the proposed section 59F(5). Besides, to ensure that the records in the database are indeed those that should be on it and that there are

no excessive or missing records, periodic reconciliation of the database with law enforcement agencies is required. Accessing to, disclosing or using the DNA information for the quoted purposes in paragraph 2 above may also amount to "administering the DNA database".

PROPOSALS

7 We note Members' concerns and consider that there is a way to address the concerns without significantly affecting the day-to-day management of the DNA database. We propose that the "administering of the DNA database" could perhaps be restricted to the purposes of adding new DNA information resulting from convictions and volunteered non-intimate samples, and reconciliation of DNA information resulting from quashed convictions or withdrawal of voluntary authorisation as well as to the purposes incidental to crime investigation and court proceeding purposes or to making the DNA information available to the relevant person concerned.

8 In other words, we propose that the proposed section 59G(2)(iv) may be amended along the line that administering the DNA database shall only be for the purposes of the proposed sections 59G(1) and 2(i), (ii) and (iii) and 59H and other purposes ancillary and incidental to the above.

9 If Members are content with the proposal in paragraph 8 above, we will work on the precise wording of a Committee Stage Amendment (CSA). Subject to an agreement of the final wording of the CSA in due course, we will move a CSA to amend the proposed section 59G(2)(iv).

ADVICE SOUGHT

10 Members are invited to comment on the Administration's proposal in paragraph 8 above.

Security Bureau
3 March 2000

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