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Paper for the House Committee meeting on 23 June 2000

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

Purpose

This paper reports on the deliberations of the Bills Committee on Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999.

The Bill

2. The Bill seeks to amend -

(a) the Dangerous Drugs Ordinance (Cap. 134) to make provisions for the taking of urine samples from individuals;

(b) the Independent Commission Against Corruption (ICAC) Ordinance (Cap. 204) to make provisions for the taking of non-intimate samples from individuals; and

(c) the Police Force Ordinance (Cap. 232) to make provisions for the taking of intimate and non-intimate samples from individuals and the maintenance of a DNA database and to provide for related matters.

The Bills Committee

3. At the meeting of the House Committee on 2 July 1999, Members agreed that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

4. Under the chairmanship of Hon James TO Kun-sun, the Bills Committee has held 21 meetings with the Administration. The Bills Committee has considered views from the Privacy Commissioner for Personal Data (Privacy Commissioner) and also visited the Government Laboratory to better understand its operations on forensic DNA analysis.

Deliberations of the Bills Committee

5. The Bills Committee has discussed in detail the proposals in the Bill and has also considered similar overseas legislation in respect of the taking of intimate and non-intimate samples. Major issues and concerns discussed by the Bills Committee are summarized below.

Amendments to the Police Force Ordinance

Intimate sample

6. Under the Bill, the Police will be allowed to take an intimate sample from a person for forensic analysis if an officer above the rank of superintendent authorizes, the person consents, and a magistrates approves. An intimate sample means a sample of blood, semen or any other tissue fluid, urine or pubic hair, a dental impression, or a swab taken from a person's body orifice other than the mouth or from a private part of a person's body. The Administration has explained that the taking of samples of blood, semen or other tissue fluid will only be carried out by registered medical practitioners. The taking of dental impressions will be carried out by dentists.

Non-intimate sample

7. The Police will also be empowered to take a non-intimate sample from a person in police detention or in custody without his consent and use necessary force to achieve the purpose upon the authorization of a Police officer of the rank of superintendent or above. A 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, and an impression of any part of a person's body.

8. Members have expressed concern about the taking of a non-intimate sample without the consent of the person from whom the sample is to be taken. Members have

questioned why the Privacy Commissioner's suggestion that non-consensual taking of non-intimate samples should require prior judicial authorization was not accepted by the Administration. Some members share the view of the Privacy Commissioner that the taking of a swab from the mouth, i.e. a buccal swab, is not significantly less intrusive than the taking of an intimate sample for which prior judicial approval is required under the Bill.

9. The Administration has responded that the law enforcement agencies would increasingly rely on the taking of a buccal swab for crime investigation purposes. The process of taking a buccal swab is entirely painless, quick, with relatively low degree of interference and is able to produce a full DNA profile. Under the proposed amendments to the Police Force Ordinance, a buccal swab can only be taken by a registered medical practitioner, police officers or public officers working in the Government Laboratory who have received training for the purpose. In view of its non-intrusiveness and the importance of enhancing the capability of law enforcement agencies in investigating crimes, the Administration considers that prior judicial authorization should not be required for the taking of non-intimate samples of buccal swab.

10. Members have expressed concern that the taking of some of the non-intimate samples, such as armpit hair, is intrusive and the question of privacy also arises. The Administration has agreed to amend the Bill to the effect that hair other than head hair is defined as an intimate sample, the taking of which will require prior judicial authorization and consent of the person concerned. The relevant Committee Stage amendments (CSAs) will be moved by the Administration.

Authorization to take samples

11. Under the Bill, an authorizing officer may give an authorization to take an intimate or a non-intimate sample from a person if he has reasonable grounds for suspecting that the person involved in a serious arrestable offence. Members consider that for consistency with the provisions in the Police Force Ordinance in relation to detention of suspects, persons should be suspected of commission of such an offence before samples could be taken. The Administration has responded that from a practical point of view, the suggestion, if adopted, may give rise to more cases of challenge by the defence in court of the authorization given to take samples. Nevertheless, the Administration has agreed to members' suggestion and will move CSAs to the Bill.

Scope of serious arrestable offence

12. The Bill proposes that a serious arrestable offence 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 five years. Where a person has been convicted of a serious arrestable offence, 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 if he has not had an intimate sample or a non-intimate sample taken from him before the conviction.

13. Members have expressed concern that the threshold of serious arrestable offence is too low. If the definition as proposed is adopted, persons who are convicted of less serious offence, such as unlawful public meeting and processions, stealing a chocolate bar from a supermarket, would be covered, and their DNA information would be stored permanently in the DNA database.

14. The Administration has responded that the threshold for taking DNA profiles adopted in the United Kingdom (UK) is any recordable offence irrespective of the level of punishment. In Canada, the threshold is all those offences involving violence and sexual assault while in Australia, it is any criminal offence irrespective of the level of punishment. The Administration considers that the proposed definition of serious arrestable offence has taken the right balance between the protection of individual's privacy and the enhancement of capability of law enforcement agencies in tackling crimes.

15. Members have suggested that the threshold for taking samples from persons should be those who are suspected to have committed an offence for which the maximum term of imprisonment is seven years or more, and also those who are suspected to have committed sexual or violent offences. The Administration has agreed to the suggestions. The relevant CSAs will be moved by the Administration.

16. Members have pointed out that a person convicted of shop theft e.g. stealing a chocolate bar from a supermarket may be sentenced to a fine of a few hundred dollars. As such an offence carries a maximum sentence of 14 years imprisonment, under the proposal in the Bill, a swab of the mouth of the convicted person will be taken and the DNA information derived therefrom will be stored permanently in the DNA database. Some members have suggested that reference should be made to the actual imprisonment term in taking samples from convicted persons.

17. The Administration has responded that experience indicates that the actual sentence does not necessarily or fully reflect the seriousness of the crime committed. The sentencing depends on a number of factors, including the circumstances of the case, the health condition of the person, family background as well as other factors relevant to the case. They often include matters unrelated to the seriousness of the offence committed. The Administration considers that the proposed thresholds for taking samples from convicted persons and storing of the DNA information are appropriate.

18. Some members have expressed concern that a large number of samples would be taken from persons convicted of serious arrestable offence. The Administration has advised that the annual average number of persons arrested by the Police between 1997 and 1999 was about 29 200 each year. The average number of people convicted of serious arrestable offence between 1996 and 1998 was about 19 800 each year. Statistical figures showed that a portion of the offenders was likely to re-offend in the

future. In the light of the plausible recidivism, the number of samples to be taken is likely to drop over time after the implementation of the legislative proposals.

19. On the criteria for taking a swab from the mouth of a convicted person, the Administration has stressed that the Police will initially target at taking samples from persons who have committed offences of a more serious nature after the Bill's passage. Its focus will be on the serious offences, such as rape, murder, serious assault and indecent assault, arson and kidnapping for which the use of DNA information for investigation purposes would be most effective. Rules setting out the type of offences which should be accorded higher priority in sample taking will be included in the internal guidelines to be issued. Coupled with the resources constraint, the Administration estimates that the total number of samples to be taken each year would be about 4 000 to 5 000.

20. At the request of members, the Administration has agreed to move CSAs to the effect that the taking of a non-intimate sample of a swab from the mouth of a convicted person will only be allowed within 12 months after he has been convicted of a serious arrestable offence. The Administration has also undertaken to explain in its speech during the resumption of the Second Reading on the Bill the criteria for taking such samples.

Taking of samples

21. Members have expressed concern about the possible abuse in taking non-intimate samples. Members have pointed out that if a person does not consent to the taking of a non-intimate sample, the sample will still be taken from him by using force where necessary. Some members have suggested that guidelines should be developed to set out in detail proper procedures for the taking of samples, and the process of sample taking should be video-recorded to ensure that the samples are taken according to the procedures.

22. The Administration has responded that not all the Police stations have video facility, and even there is one, the facility may be in use. The Administration is of the view that the proposal of video recording may result in undesirable movement of suspects from one place to another and unnecessary delays in the taking of samples. The Administration has informed members that non-consensual taking of samples will be witnessed by an officer of Inspectorate rank or above. Internal guidelines will be issued to ensure that samples are taken in accordance with the provisions in the Bill.

23. At the request of members, the Administration has agreed to set out in the internal guidelines that where the suspect does not consent, the samples taking process will be videotaped as far as practicable.

Restriction on the use of samples and results of forensic analysis

24. Some members have expressed concern about the provisions which allow for the samples covered by the Bill and information derived therefrom to be used in relation to investigation of any offence. These members share the views of the Privacy Commissioner that as such samples and information are obtained on the basis of suspicion of committing a serious arrestable offence, their use should be confined to investigation in relation to such an offence.

25. The Administration has responded that the objective of the Bill is to provide the law enforcement agencies with the statutory power to obtain intimate and non-intimate samples from suspects for crime investigation purpose, subject to the safeguards in the Bill. The use of the DNA information of a suspect for general investigation of undetected crime is also a practice adopted by overseas countries, such as the UK, United States (US) and Australia. The Administration considers that it is justifiable in the wider public interest to provide such power in view of the law enforcement needs for combating crime and upholding the public safety of Hong Kong.

26. As the threshold of taking samples is serious arrestable offence, some members remain of the view that the use of samples and DNA information derived therefrom for investigation of any offence or any undetected crime should be restricted to serious arrestable offences only. Hon James TO has indicated that he will move amendments to the Bill to this effect.

Tampering of samples and DNA information

27. Members have expressed concern about the possibility of persons deliberately interfering with the samples obtained under the Bill and DNA information derived therefrom. Members have suggested that criminal liability should be imposed on these persons.

28. The Administration has explained to members the procedures and the steps taken to ensure the preservation of the chain of evidence. The Administration has pointed out that there are already strict guidelines within the Government Laboratory governing the handling of samples for forensic analysis, including DNA analysis. The Government Laboratory is an accredited crime laboratory and has a proven track record of its professionalism. Extreme care and caution have been taken and will continue to be taken to ensure that opportunities for tampering evidence are minimized.

29. The Administration has further explained that any person who intends to interfere with the sample, the DNA information, or the results of forensic analysis therefrom commits the offence of perverting the course of justice, and will be liable upon indictment to seven years imprisonment. Furthermore, as provided in the Bill, any person who uses the sample, results of forensic analysis or the DNA information in the DNA database for purposes other than those specified in the Bill commits an offence and is liable on conviction to a maximum fine of $25,000 and to imprisonment for six

months. The Administration considers that there are sufficient safeguards against the samples and DNA information from being tampered with.

Non-intimate samples given voluntarily

30. Proposed section 59F of the Police Force Ordinance provides a mechanism whereby people who have attained the age of 18 years may voluntarily give an authorization in writing to a Police officer of the rank of superintendent or above for taking his or her non-intimate sample for storage of DNA information in the DNA database to be set up. The volunteer can, at any time, withdraw his DNA information from the database by notifying the Police and the DNA information will then have to be destroyed as soon as practicable.

31. Some members have expressed concern about the provisions as some people may be forced to volunteer their samples. These members have pointed out that where a serious crime has occurred in the neighborhood and if there is an appeal for the giving of volunteer sample from people in the vicinity, some people may be under pressure to volunteer their samples. This may have an impact on the rights of an individual on whether or not to volunteer their samples. Some members however consider that prohibiting a person from volunteering his sample is a deprivation of the person's rights.

32. The Administration has explained to members about a case in 1993 where a man sentenced to 18 years of imprisonment for a charge of rape and robbery committed in 1991 requested a re-examination of relevant exhibits using the then DNA profiling technique. The man was then found to be innocent, and had his conviction quashed on appeal. With the voluntary system, a convicted offender can volunteer to give a non-intimate sample and have his DNA information stored until such time as his innocence is proved and/or his authorization is withdrawn. The Administration has informed members that in the US, a project called the Innocence Project has been launched to help clear the wrongly accused.

33. The Administration has also explained that overseas experience suggests that some reformed offenders may wish to volunteer such information to pre-empt further approaches from the law enforcement agencies. Such a mechanism has been adopted by some developed countries, such as the UK. The Administration has assured members that under no circumstances will a person be forced or pressured to giving a non-intimate sample. If a person does not sign an authorization for the taking of a sample of his own volition, he can at any time by notice in writing withdraw his authorization. The proposed provisions on volunteer samples will provide a better safeguard on the use, the storage as well as the destruction of the samples and information derived therefrom. Guidelines on accepting and taking of volunteer samples will be issued.

34. At the request of members, the Administration has undertaken to state in its speech during the resumption of the Second Reading debate on the Bill that the Administration will not appeal to people to volunteer their samples.

35. Upon members' request, the Administration has also agreed to move CSAs to provide that the person who volunteers his sample will be informed of how the sample will be used, his right to request access to information and his right to withdraw authorization.

Storage and destruction of DNA information

36. Members have enquired about the circumstances under which DNA information will be stored and destroyed.

37. The Administration has explained that the DNA database is established under the proposed section 59G(1). The circumstances where DNA information may be stored in the DNA database are very restrictive. Only DNA information of people who have been convicted of serious arrestable offence or of people who have volunteered their samples will be stored in the database. DNA information of suspects prior to conviction will not be stored in the DNA database.

38. The Administration has also explained that if a suspect is not charged, or is charged but the charge is withdrawn, or is discharged by the court before conviction of the offence, the DNA information derived from the samples taken will be destroyed. If a suspect is acquitted of the offence or all the offences, or has his conviction quashed on appeal, DNA information derived from the samples taken will also be destroyed.

39. Members have suggested that, where the circumstance requires the destruction of DNA information, a provision be added to the effect that the DNA information derived from the samples taken under the Bill together with the samples shall be destroyed or if the person so prefers, delivered to that person, and that the person will be informed in writing when the DNA information and samples have been destroyed. The Administration has agreed that a person will be confirmed in writing that the samples and DNA information have been destroyed as soon as these have been carried out. However, the samples will not be delivered to that person because of hygiene reason. The relevant CSAs will be moved by the Administration.

40. Upon members' request, the Administration has agreed to move CSAs to the Bill to provide that the sample and DNA information derived therefrom will not be used during the time between the decision not to charge the person, or after the volunteer has withdrawn his authorization etc, and the time of the destruction of the sample and DNA information. The Administration has also agreed to move CSAs to the Bill to the effect that samples will be destroyed after conclusion of all proceedings upon conviction of one or more offences only if there is no other relevant charge against the person from whom the sample is taken.

DNA database

41. The proposed section 59G(2) of 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 -

(a) forensic comparison with any other information in the course of crime investigation by the Police or the ICAC;

(b) producing evidence in respect of the DNA information in any proceedings;

(c) making the information available to the person to whom the information relates; and

(d) administrating the DNA database.

42. Members have expressed concern that the provision for administrating the DNA information may be too broad and there may be risk of legitimizing unnecessary access to DNA information and the disclosure and use thereof. To address members' concern, the Administration has proposed that the administering of the DNA database should 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 authorization. It should also be restricted to the purposes incidental to crime investigation and court proceeding purposes or to making the DNA information available to the relevant person concerned. The relevant CSAs will be moved by the Administration.

43. Some members have expressed concern about how information in the DNA database will be used. These members are particularly concerned that the DNA information stored in the database may be used for "genetic personality profiling". The Administration has pointed out that the circumstances where DNA information is allowed to be accessed to, disclosed or used are specified in the proposed section 59G(2). Any changes in how the DNA information in the database may be used will require legislative amendments and are subject to the scrutiny of the Legislative Council. Having regard to the fact that DNA information is only a string of numbers and that samples will be destroyed after conclusion of proceedings, the Administration is of the view that it would be impossible to manipulate the string of numbers for any forensic or "genetic personality profiling" purpose.

44. Some members however have pointed out that future DNA technology may advance to such a stage that some form of "genetic testing" or "genetic personality profiling", such as analysis of a person's anti-government inclination, may be possible even with the string of numbers. To address these members' concern, the Administration has undertaken to inform the Panel on Security in advance if there is any change in the DNA technology, including any changes to the technology used in forensic DNA analysis which could easily allow the DNA information to be used for purposes which have not been envisaged before.

Ownership of DNA database

45. Under the proposed section 59G(1) of the Police Force Ordinance, the DNA database will be maintained by the Government Chemist on behalf of the Commissioner of Police (CP). Some members have expressed concern that as CP has the authority over the control of the DNA database, if the Police decides not to give consent for access to the database, forensic comparison between the DNA information of the sample provided by the defendant and information in the database would be not be possible. These members have suggested that the DNA database should belong to an independent third party, for example, the Government Chemist.

46. The Administration has explained that the DNA database will not belong to the Police. It will be maintained by the Government Chemist on behalf of CP as the Police is responsible for the investigation of most criminal cases and the keeping of criminal records which include the DNA database. The suggestion of delegating the Government Chemist with the ultimate responsibility over the DNA database will impose on him duties which are far beyond the capability of the Government Chemist. For example, the Government Chemist would need to ensure that CP or the Commissioner, ICAC has taken reasonable steps to ensure the destruction of DNA information as provided in the Bill. The Administration has pointed out that the Bill does not provide that the DNA database is subject to the exclusive use of CP or that approval from him is required for forensic comparison with information in the DNA database.

47. The majority of members share the view that the suggestion would impose unnecessary burden on the Government Chemist. These members consider that the proposed provision is acceptable.

Right of defendants to request service from the Government Laboratory

48. Some members consider that defendants should be provided with the statutory right to request the Government Laboratory to provide forensic analysis services so as to enable him or her to obtain information, such as DNA information or results of forensic comparison, which will be useful for the preparation of his case.

49. The Administration has explained that under the current legal system, the burden of establishing a case against the defendant beyond reasonable doubt is upon the prosecution. If a defendant suggests that forensic analysis of certain items might help clarify the identity of the culprit or would be useful to his defence, the Government Laboratory would entertain such a request if it is reasonable to do so. The Administration has pointed out that if a provision is to be added to confer the defendant the right to request services of the Government Laboratory, such a provision may greatly increase the number of forensic analyses required of the Government Laboratory, some of which may not be genuinely needed or may not really help to investigate the crime.

More importantly, this may cause delay in the investigation of other crimes, the solving of which rely heavily on the forensic analysis results.

50. At the request of members, the Administration has undertaken to state in its speech during the resumption of the Second Reading debate on the Bill that defendants' request for services of the Government Laboratory would be entertained if such services would genuinely help to solve the case or are needed by the defence to prove or substantiate his case.

Amendment of Schedule 2

51. The Bill proposes to add a Schedule 2 to provide for the procedure of application to, and the giving of approval, by a magistrate for the taking of intimate samples. The Chief Executive in Council may by order published in the Gazette amend Schedule 2.

52. Upon members' request, the Administration has agreed to move CSAs to the effect that any amendments to Schedule 2 will require the approval of the Legislative Council, i.e. subject to the positive vetting procedure.

Binding effect of the proposed section 59G of the Police Force Ordinance on the State

53. The proposed section 59G 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 purposes specified in the proposed subsections (2)(i) to (2)(iv). Any other uses except for the specified purposes are prohibited. Any person contravening these provisions commits an offence and is liable on conviction to a maximum fine of $25,000 and to imprisonment for six months.

54. Some members have pointed out that section 66 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that "No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby." Some members consider that there is a need to add an express provision that the State is bound by the proposed section 59G of Police Force Ordinance in respect of access to, use or disclose information stored in the DNA database.

55. The Administration has explained that under the proposed provisions, any person who gains access to the DNA database or discloses or uses any such information except for the specified purposes will commit an offence. The criminal offence provision applies to every individual including State officials in the Hong Kong Special Administrative Region (HKSAR). Any unauthorized access to the database or unauthorized use of the DNA information must be done by individuals, that is, a contravention of the proposed section could only be committed by individuals. Under the common law, the individuals will be personally liable and execution of duty or

obedience to superior orders is not a defence in a criminal prosecution. The Administration considers that the proposed section provides adequate coverage to catch all persons responsible for any contravention. It is not necessary to include an express provision to bind the State in the proposed section 59G. It will be up to the court to decide whether by necessary implication the State should be bound by the proposed provisions.

56. Some members have expressed concern that if it is proven that an illegal use of DNA information is authorized by the State as an "act of State", the HKSAR courts would have no jurisdiction over such cases under Article 19 of the Basic Law (BL).

57. The Administration has responded that an act authorized by the State or the conduct of a State official is not necessarily an "act of State" as defined in BL 19. The mere fact that a particular act is conducted by a State official, or conducted with the authorization of the State does not necessarily mean that it is itself an "act of State" over which courts of HKSAR have no jurisdiction. The Administration has stressed that irrespective of whether a piece of legislation contains an express provision to bind the State, in the unlikely event that "acts of State" are involved, the HKSAR courts will have no jurisdiction over such acts by virtue of BL 19.

58. Some members are of the view that State organs outside the HKSAR may by certain means other than by individuals to have obtained information from the DNA database. In the absence of an express binding provision on the State, those State organs will not be bound unless it appears by necessary implication that the State is bound. These members consider it necessary to add an express provision to make the proposed section 59G of the Police Force Ordinance binding on the State. As there is no consensus view of the Bills Committee, Hon James TO has indicated that he will move a CSA to this effect. Hon James TO will also move CSAs to the effect that proposed section 59D of the Police Force Ordinance and proposed section 10F of the ICAC Ordinance on the use of samples and results of forensic analysis shall bind the State.

Amendments to the Dangerous Drugs Ordinance (DDO)

59. The Bill proposes to allow the taking of urine samples for forensic analysis from individuals upon the fulfilment of the following conditions -

(a) the individual concerned or whose parent or guardian consents;

(b) a police officer or a member of the Customs Excise Service of or above the rank of superintendent authorizes; and

(c) a magistrate approves.

Judicial authorization for taking of urine sample

60. The Administration has explained that the taking of urine sample is for the investigation of dangerous drugs offences. The objective to provide officers of the Customs and Excise Service the statutory power to take urine sample is to facilitate their detection of internal concealment of drugs.

61. Members have expressed concern about the need to obtain judicial authorization for taking urine samples even when the suspects have given consent. Members are concerned that the proposal may lead to much longer detention of suspects at immigration control points when compared with the exiting practice. The Administration has explained that the proposal is in line with the provisions in other parts of the Bill that the taking of intimate samples requires judicial authorization. The proposal provides safeguards to the rights of suspects and increases transparency of the system in that the magistrate may look at whether there are reasonable grounds for suspecting the commission of a serious arrestable offence by the person from whom the urine sample is taken. The Administration has pointed out that the process of taking the urine sample from suspects will be witnessed by a police officer or an officer of the Customs and Excise Service of the same sex as that person. The question of undue intrusion into privacy will arise.

62. Members considers that the proposal of requiring judicial authorization for taking urine samples from suspects is acceptable on the ground of privacy.

Power to take non-intimate samples

63. Members are of the view that Customs and Excise Service officers may need the power to take other samples, in addition to urine sample, for the investigation of dangerous drugs offences. Members consider that the power to take non-intimate sample is necessary to allow officers of the Customs and Excise Service to collect contact evidence when investigating dangerous drug offences, e.g. substance from finger nails and hands, from suspects arrested in drug manufacturing premises. The Administration has pointed out that such power is currently provided under section 54 of

DDO. Given the existing power under DDO and the fact that the Bill will not remove such power from the Customs and Excise Service officers, the Administration considers that the present proposal to provide Customs and Excise Service officers with the power to take urine sample is sufficient.

Amendments to the Independent Commission Against Corruption (ICAC) Ordinance

Justifications for ICAC officers to have the power to take non-intimate samples

64. The Bill proposes to allow ICAC officers the power to take non-intimate samples from a person with or without his consent for forensic analysis. Members have questioned the rationale for providing ICAC officers with such power, and how the power to take non-intimate samples may assist the ICAC in its investigation of corruption offences and other related crimes.

65. The Administration has explained that as corruption is a secretive crime, very often there is no direct evidence of the corrupt transaction. Where direct evidence is available, it will invariably be the oral testimony of either the offeror or the acceptor against the other party. As an accomplice, the evidence of the offeror or the acceptor is tainted and therefore corroborative evidence is essential for a court to convict a defendant. In this regard, DNA information obtained from non-intimate samples will provide an important source of corroborative evidence for ICAC's investigation of corruption offences. The Administration has also explained in detail the situations where DNA information derived from non-intimate sample are needed.

66. The Administration has stressed that ICAC's investigation will benefit from DNA evidence by rendering the investigations more cost-effective and the evidence more reliable. If the ICAC is not given the power, it would have to seek Police's assistance where necessary. The Administration considers that this arrangement would be unsatisfactory and would undermine the operational independence of the ICAC. The Administration has assured members that the ICAC would put in place safeguard mechanism to ensure that the power will not be abused.

67. Members have accepted that ICAC officers should be empowered to take non-intimate samples from suspects.

Disposal of samples and records

68. Under the proposed section 10G, the non-intimate sample taken and all information derived from the forensic analysis of the sample will be destroyed at the expiry of 12 months after the taking of the sample if the person concerned is not charged with any offence under section 10, or after the conviction, discharge or acquittal of the person concerned, whichever occurs first. The period of 12 months may be extended by an officer of the rank of Assistant Director of the ICAC. The Administration has explained that where the Operations Review Committee has approved to terminate an

investigation within 12 months, the samples and its related recorded will be destroyed as soon as thereafter. This arrangement will be set out in the procedures in relation to the taking of non-intimate samples to be established.

Committee Stage amendments

69. Apart from the CSAs explained in the above paragraphs, the Administration will move a number of minor and technical amendments to the Bill. The CSAs to be moved by the Administration are in **Appendix II**.

70. The CSAs to be moved by Hon James TO are in **Appendix III**.

Recommendation

71. The Bills Committee recommends that subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed at the Council meeting of 26 June 2000.

Advice Sought

72. Members are invited to support the recommendation of the Bills Committee in paragraph 71 above.

Council Business Division 2
Legislative Council Secretariat
21 June 2000

附錄I
Appendix I

《1999年危險藥物、總督特派廉政專員公署及警隊(修訂)條例草案》委員會

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

Membership List

涂謹申議員(主席)	**Hon James TO Kun-sun (Chairman)**
何俊仁議員	**Hon Albert HO Chun-yan**
周梁淑怡議員	**Hon Mrs Selina CHOW LIANG Shuk-yee, JP**
程介南議員	**Hon Gary CHENG Kai-nam, JP**
劉慧卿議員	**Hon Emily LAU Wai-hing, JP**

合共 ： 5位議員
Total ： 5 Members

日期 ： 2000年1月6日
Date ： 6 January 2000

Appendix II

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) in subsection (2) -
	(A) by deleting paragraph (a) and substituting -
	"(a) for suspecting that the person from whom the urine sample is to be taken has committed a serious arrestable offence; and";
	(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";
	(ii) by deleting subsection (3) and substituting -
	"(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.";
	(iii) in subsection (4) -
	(A) in paragraph (a), by deleting

"been involved" and substituting "committed";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

(C) by deleting paragraph (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.";

(iv) by adding -

"(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.";

(v) 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) In the proposed section 54AC, by adding "but any order to amend that Schedule shall be subject to the approval of the Legislative Council" after "Schedule".

3 In the proposed Seventh Schedule -

(a) in section 3(a) (ii) -

(i) by deleting sub-subparagraph (A) and substituting -

"(A) for suspecting that the person from whom the urine sample is to be

taken has committed a serious arrestable offence; and";

(ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";

(b) in section 4, by deleting "3 days" and substituting "a period as may be directed by the magistrate";

(c) in section 6(a) (ii) -

(i) by deleting sub-subparagraph (A) and substituting -

"(A) for suspecting that the person from whom the urine sample is to be taken has committed a serious arrestable offence; and";

(ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";

(d) in Form 1, in paragraph (a) -

(i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";

(ii) in subparagraph (ii), by deleting

"involvement of" and substituting "commission of the offence by";

(e) in Form 2, in paragraph (b) -

(i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";

(ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by".

4 (a) In the proposed section 10E -

(i) in subsection (2) -

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

"(a) for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

(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) in subsection (4) -

(A) in paragraph (a), by deleting "been involved" and substituting "committed";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

(C) by deleting paragraph (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";

(iv) by adding -

"(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.";

(v) 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 (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 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 -

"(4) 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.".

5 (a) In the proposed 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 proposed 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);".

(c) 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) in subsection (2) -

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

"(a) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

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

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

(iii) in subsection (4) -

(A) in paragraph (a), by deleting "been involved" and substituting "committed";

(B) in paragraph (b), by deleting "involvement of" and substituting

"commission of the offence by";

(C) in paragraph (e), by adding "或任何其他罪行" after "罪行";

(D) by deleting paragraph (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 -

"(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) in subsection (2) -

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

"(a) for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence;

and";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

(iii) 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.";

(iv) in subsection (4) -

(A) in paragraph (a), by deleting "been involved" and substituting "committed";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

(C) by deleting paragraph (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";

(v) by adding -

"(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 sample 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 nonintimate 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 -

"(3A) Where an authorization has been given pursuant to subsection (1), a police officer shall, before the taking of a nonintimate 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) In the proposed section 59G(2) -

(i) in paragraph (iii), by deleting "or";

(ii) by deleting paragraph (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; or

(v) any investigation or inquest into the death of a person under the Coroners Ordinance (Cap. 504).".

(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 1A 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	assaults 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 In the proposed Schedule 2 -

(a) in section 3(a) (ii) -

(i) by deleting sub-subparagraph (A) and substituting -

“(A) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and”;

(ii) in sub-subparagraph (B), by deleting “involvement of” and substituting “commission of the offence by”;

(b) in section 4, by deleting “3 days” and substituting “a period as may be directed by the magistrate”;

(c) in section 6(a) (ii) -

(i) by deleting sub-subparagraph (A)

and substituting -

“(A) for suspecting that the person from whom the intimate sample is to be taken has committed a

serious arrestable offence; and";

(ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";

(d) in Form 1, in paragraph (a) -

(i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";

(ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by";

(e) in Form 2, in paragraph (b) -

(i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";

(ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by".

Appendix III

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

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

Clause	Amendment Proposed
2	(a) In the proposed section 54AA(4)(e), by deleting "offence in relation to dangerous drugs" and substituting "serious arrestable offence".
	(b) In the proposed section 54AB -
	(i) by deleting subsection (1) and substituting -
	"(1) Without prejudice to subsection (3A), no person shall have access to, dispose of or use a urine sample taken pursuant to section 54AA except for the purposes of forensic analysis in the course of an investigation of any serious arrestable offence.";
	(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 a serious arrestable offence; 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 a serious arrestable offence after-

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

(iv) in subsection (4)-

(A) in paragraph (i), by deleting "offence in relation to dangerous drugs" and substituting "serious arrestable offence";

(B) in paragraph (ii), by deleting "offences in relation to dangerous drugs" and substituting "serious arrestable offences";

(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 serious arrestable offences; 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.".

4 (a) In the proposed section 10E(4)(f), by deleting "offence for which a person may be arrested under section 10" and substituting "serious arrestable offence".

(b) In the proposed section 10F -

(i) by deleting subsection (1) and by substituting-

"(1) Without prejudice to subsection (4), no person shall have access to, dispose of or 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 serious arrestable offence; or

(b) any proceedings for any such offence”.”

(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 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 serious arrestable 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) of the Police Force Ordinance (Cap. 232) where the results are of forensic

DNA analysis.";

(iii) by adding -

"(4) 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 a serious arrestable offence after -

(a) it is decided that a person from whom the sample was taken shall not be charged with any serious arrestable 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.".

(iv) by adding -

"(5) This section shall be binding on the State.".

(c) In the proposed section 10G -

(i) in subsection (1)-

(A) in paragraph (i), by deleting "offence for which a person may be arrested under section 10" and substituting "serious arrestable offence";

(B) in paragraph (ii), by deleting "offences for which a person may be arrested under section 10" and substituting "serious arrestable offences";

(ii) by deleting subsection (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 any serious arrestable offence; 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.".

6 (a) In the proposed section 59A(4)(e), by deleting "any other offence" and substituting "any other serious arrestable offence".

(b) In the proposed section 59C(4)(f), by deleting "any other offence" and substituting "any other serious arrestable offence".

(c) In the proposed section 59D -

(i) by deleting subsection (1) and by substituting -

"(1) Without prejudice to subsection (4), no person shall have access to, dispose of or 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 serious arrestable offence; or

(b) any proceedings for any such offence.

(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 serious arrestable 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 sample 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 serious arrestable 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).";

(iv) by adding -

"(6) This section shall be binding on the State.".

(d) In the proposed section 59G -

(i) in subsection (2)(i), by deleting "any offence" and substituting "any serious arrestable offence";

(ii) by adding -

"(4) This section shall be binding on the State.".

(e) In the proposed section 59H-

(i) in subsection (1) -

(A) in paragraph (i), by deleting "any offence" and substituting "any serious arrestable offence";

(B) in paragraph (ii), by deleting “one or more offences” and substituting “one or more serious arrestable offences”;

(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 of serious arrestable offence against the person which renders the retention of the 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.”.