



**CRIMINAL PROCESS (IDENTIFICATION AND SEARCH
PROCEDURES)**

No. 30 of 1976

ANALYSIS

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AN ACT to amend the law in respect of criminal process and to amend the *Prison Act 1868* and the *Criminal Code*.

[21 June 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as the *Criminal Process (Identification and Search Procedures) Act 1976*. Short title.

Interpretation.

2 In this Act—

- “ medical practitioner ” means a legally-qualified medical practitioner;
- “ officer of police ” means such an officer appointed under section 10 of the *Police Regulation Act 1898*;
- “ police officer ” has the meaning assigned to that expression in the *Police Regulation Act 1898*.

Photographing
and finger-
printing of
persons in
lawful custody.**3**—(1) Subject to subsection (2), where a person is in lawful custody—

- (a) being 17 years of age or older and who, having been arrested, is charged with an offence referred to in the Schedule;
- (b) under a sentence of imprisonment; or
- (c) pursuant to an order under section 4,

records may be made for his present or future identification.

(2) Notwithstanding paragraph (a) of subsection (1), records of a person referred to in that paragraph shall not be made except as directed by an officer of police (which direction officers of police are hereby authorized to give) or, where the person is in custody at a police station, by an officer of police or the police officer who is, in the normal course of his duties, in charge of that station, whether by virtue of a permanent or temporary transfer or appointment, (which direction such a police officer is hereby authorized to give).

(3) For the purposes of subsection (1)—

- (a) records may be made by photography and finger-printing;
- (b) the person of whom the records are to be made shall submit himself to such photography and finger-printing as may reasonably be required of him; and
- (c) if the person of whom the records are to be made refuses or fails to submit himself to photography and finger-printing, or wilfully obstructs the conduct thereof, a police officer may use such force as is reasonably necessary for the purpose of enabling the photography or finger-printing, or both the photography and finger-printing, to be effected.

(4) Where—

- (a) records have been made under this section in respect of a person while he was in such custody as is referred to in subsection (1) (a); and

(b) the proceedings in respect of which he came to be in such custody have been terminated otherwise than by his conviction of an offence referred to in the Schedule,

those records and any copies that have been made of them shall be destroyed within seven days of such termination and the Commissioner of Police, when he is satisfied that such destruction has occurred, shall cause written notice of the fact to be given to that person.

4—(1) Where a person is convicted of an offence punishable by imprisonment, the court before which he is convicted may order him to be detained in custody for a period not exceeding 24 hours for the purpose of enabling such records to be made as are referred to in section 3 (3).

Person convicted of offence punishable by imprisonment may be detained in custody for purpose of photography and fingerprinting.

(2) Where proceedings against a person charged with an offence punishable by imprisonment terminate with an order made under section 7 (1) of the *Probation of Offenders Act 1973* he shall, for the purpose of subsection (1), be deemed to have been convicted of that offence.

5—(1) Where a person is in lawful custody having been arrested and charged with an offence, a police officer may search that person in any case where he believes on reasonable grounds that it is necessary to do so—

Search of accused persons in custody.

(a) for the purpose of ascertaining whether there is concealed on his person or in his clothing a weapon or other article capable of being used to inflict injury or to assist him to escape from custody; or

(b) for the purpose of preventing the loss or destruction of evidence relating to the offence.

(2) Subsection (1) (b) does not authorize a police officer to require a person to remove any of the clothing that he is wearing unless the offence with which he has been charged is of such a nature or alleged to have been committed under such circumstances that there are reasonable grounds for believing that the removal and examination or detention of any such clothing may afford evidence of the commission of the offence.

(3) A police officer may take and retain—

(a) any weapon or other article referred to in subsection (1)

(a); and

(b) any article of clothing or other thing which may afford evidence of the commission of the offence, found as a result of a search made in accordance with subsection (1).

(4) A police officer may use such force as is reasonably necessary for the purpose of exercising his powers under this section.

(5) Subsection (1) shall not be construed as preventing a search of a person in lawful custody in any circumstances where, apart from the subsection, it is lawful to search such a person.

Examination
of accused
persons in
custody for
evidence of
offence charged.

6—(1) Where a person is in lawful custody having been arrested and charged with an offence referred to in the Schedule, and the offence is of such a nature or alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his body may afford evidence of the commission of the offence, it is lawful for a medical practitioner acting at the request and in the presence of a police officer, and any member of the police force or any person working in the medical or nursing professions acting in good faith in aid of and under the direction of the medical practitioner, to make such an examination of the clothing and of the body of the person so in custody as is reasonably necessary to discover any facts which may afford such evidence, and to take possession of and retain any matter or thing that may afford such evidence and a police officer may take prints of any part of the body of the person who is so examined.

(2) If a person in lawful custody referred to in subsection (1) requests that the examination in that subsection referred to be not carried out unless another medical practitioner, of the same sex as the person in custody, is present, the examination shall not be conducted unless another medical practitioner of the same sex as the person in custody is present unless the circumstances are such that it is not reasonably practicable to arrange for the presence of such another medical practitioner at the examination.

(3) Notwithstanding subsection (1), such an examination as is in that subsection referred to shall not be conducted until the person to be examined has been informed of the request he may make in accordance with subsection (2).

(4) No liability whatsoever shall devolve on a medical practitioner who, at the request of a police officer, examines the body of an accused person in custody, or on any person acting in good faith in aid of and under the direction of the medical practitioner, by

reason of such custody not being lawful, or because the person was not informed in accordance with subsection (3), or by reason of the unreasonable denial of a request by the person in custody for the presence of another medical practitioner of the same sex as the person in custody.

(5) For the purpose of subsection (1), it is lawful for a medical practitioner or other person making an examination therein referred to to take samples of the blood, saliva, and hair of the person being examined, and to take nail clippings of that person.

(6) If the person of whom an examination is to be made as provided by this section refuses or fails to submit himself to such examination, or wilfully obstructs the conduct thereof, a police officer or a medical practitioner may use such force as is reasonably necessary for the purpose of enabling the examination to be conducted.

7—(1) Where a person is in lawful custody, having been arrested and charged with an offence, a magistrate, upon application being made to him in that behalf by a police officer, may make an order authorizing the search and examination of the person charged in accordance with subsection (3). Examination of accused person in custody for evidence of offence other than offence charged.

(2) A magistrate shall not make an order under this section unless he is satisfied that the police officer has reasonable grounds for believing that such an examination may afford evidence of the commission of some offence punishable by imprisonment being an offence other than that with which the person the subject of the application is charged.

(3) Where a magistrate has made an order under subsection (1) it is lawful for a medical practitioner acting at the request and in the presence of a police officer, and any person acting in good faith in aid of and under the direction of the medical practitioner, to make such an examination of the clothing and the body of the person so in custody as is reasonably necessary to discover any facts which may afford evidence of an offence, and to take possession of and retain any matter or thing that may afford such evidence and a police officer may take prints of any part of the body of a person who is so examined.

(4) The provisions of section 6 (2) and (3) apply in respect of an examination conducted under this section as they apply to an examination conducted under that section.

Person in
custody not to
be left with
inadequate
clothing.

8 Nothing in sections 5, 6, or 7 shall authorize any police officer to require the removal or to remove any clothing worn by any person so as to deprive him of adequate clothing, unless that person is immediately provided with other adequate clothing or covering.

Amendment of
the *Prison Act*
1868.

9 Section 52 of the *Prison Act* 1868 is repealed.

Amendment of
the *Criminal
Code*.

10 Section 33 of the *Criminal Code* is repealed.

THE SCHEDULE

(Section 3)

- 1 Every offence being a crime within the meaning of the *Criminal Code*.
- 2 The offence of driving a motor vehicle on a public street recklessly or at a speed or in a manner dangerous to the public, contrary to section 32 (1) of the *Traffic Act* 1925.
- 3 Offences against the following provisions of the *Police Offences Act* 1935, namely:—
 - Section 7 (Loiterers, &c.)
 - Section 8 (1A) (b) (Living off the earnings of prostitution)
 - Section 8 (1B) (Imposing upon a person by any false or fraudulent representation with a view to obtaining money or any other benefit or advantage)
 - Section 34B (1) (a) (Assault, resist, or wilfully obstruct a police officer in the execution of his duty, &c.)
 - Section 35 (Common assault and aggravated assault on females and children)
 - Section 36 (Injury by driving, &c.)
 - Section 37 (Offences relating to property)
 - Section 37B (Motor vehicle stealing)
 - Section 37C (Procuring the hire or use of a motor vehicle by fraud, &c.)
 - Section 38 (Unlawful pawning)
 - Section 39 (Possession of stolen property)
 - Section 39A (Offences in relation to sheep, cattle, and other stock)
 - Section 40 (Possession and sale of shipwrecked property)
 - Section 41 (Advertising reward for return of stolen property, &c.)
 - Section 42 (Taking or using animal, vehicle, or vessel, without owner's consent)
 - Section 43 (Failing to convey and deliver found property to a police station)

4 Offences against the following provisions of the *Poisons Act* 1971, namely:—

Section 45 (Restriction of importation of raw narcotic or narcotic substance)

Section 46 (Manufacture of narcotic substances)

Section 47 (Sale and supply of narcotic substances, prohibited plants, and prohibited substances)

Section 48 (Possession of narcotic substances, &c.)

Section 49 (Prohibition of possession of prohibited plants except under licence)

Section 51 (Forgery, &c., of prescriptions and making of false representations in relation to narcotic substances)

Section 54 (Prohibition of smoking, &c., of opium)

Section 55 (Prohibition of manufacture, &c., of prohibited substances)

