

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Amendment) Bill (No. 2) 1996

**A BILL
FOR**

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Crimes (Amendment) Act (No. 2) 1996*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

- 10 3. In this Act, "Principal Act" means the *Crimes Act 1900*.¹

Job No.: 1996/80 86024 (T24/96)

Substitution

4. Section 349ZX of the Principal Act is repealed and the following section substituted.

Examination

5 “349ZX. (1) In this section—

‘examination’ means an examination of the body of the person charged and includes the taking of samples of the person’s blood, saliva or hair.

10 “(2) An examination of a person under this section may be conducted where—

(a) the person consents; or

(b) an order is made under subsection (3).

15 “(3) Where a person (in this section called the ‘person charged’) is in lawful custody upon a charge of committing an offence and a Magistrate is satisfied, on the balance of probabilities, that the offence—

(a) is of such a nature; and

(b) has been committed under such circumstances;

20 that there are reasonable grounds for believing that an examination of the person charged will afford evidence as to the commission of the offence, the Magistrate may order such an examination.

“(4) If the person charged is not present at the time that the order is made, a copy of the order shall be given to the person.

25 “(5) Where an order is made under subsection (3) or a person charged consents to an examination, a police officer may request a medical practitioner to carry out the examination and, if the medical practitioner agrees to carry it out, shall give the medical practitioner a copy of the order.

“(6) A medical practitioner carrying out an examination may be assisted by 1 or more persons acting under the direction of the medical practitioner.

“(7) An examination of the person charged—

30 (a) shall be carried out in circumstances affording reasonable privacy to the person,

35 (b) in the case of an examination which includes the external examination of the genital or anal area, the buttocks, or, in the case of a female, the breasts—shall not be carried out in the presence or in view of a person of the opposite sex to the person being examined:

- (c) shall not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the examination;
- (d) shall not involve the removal of more clothing than is necessary for carrying out the examination; and
- 5 (e) shall not involve more visual inspection than is necessary for carrying out the examination.

“(8) Subsection (7) does not prevent an examination being carried out by a medical practitioner of the opposite sex to the person being examined.

- 10 “(9) A medical practitioner carrying out an examination under this section, an assistant of the medical practitioner or a police officer, may use reasonable force to enable the examination to be carried out including the prevention of loss, destruction or contamination of a sample.

- 15 “(10) Samples taken from a person charged with an offence shall be destroyed as soon as practicable after the conclusion of the proceedings relating to the offence and the exhaustion of any right of appeal.

“(11) No action or proceeding, civil or criminal, lies against—

- (a) a person who conducts, or assists in conducting, an examination under this section (including such a person who uses reasonable force as provided in subsection (9)); or
- 20 (b) a police officer who uses reasonable force as provided in that subsection.

“(12) This section does not apply to a person to whom section 36 of the *Children’s Services Act 1986* applies.”

Application

- 25 5. Section 349ZX of the Principal Act, as amended by this Act, applies in relation to a person in lawful custody before the commencement of this Act upon a charge of committing an offence. 4

NOTE

Principal Act

- 1. Reprinted as at 31 January 1994. See also Acts Nos. 38, 46, 75, 84, 86, 97 and 98, 1994; Nos. 2, 3, 49 and 50, 1995.

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