

BILL AS TABLED

A BILL

entitled

POLICE AND CRIMINAL EVIDENCE AMENDMENT (NO. 2) ACT 2010

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WHEREAS it is expedient to amend the Police and Criminal Evidence Act 2006;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

POLICE AND CRIMINAL EVIDENCE AMENDMENT (NO. 2) ACT 2010

Citation

1 This Act may be cited as the Police and Criminal Evidence Amendment (No. 2) Act 2010.

Amends section 35

2 Section 35 of the Police and Criminal Evidence Act 2006 (in this Act referred to as "the principal Act") is amended—

- (a) in subsection (4), by deleting "written";
- (b) in subsection (5), by deleting "written"; and
- (c) in subsection (6), by deleting "written".

Amends section 39

3 Section 39 of the principal Act is amended—

- (a) by deleting subsection (3);
- (b) in subsection (4), by inserting the words "for a reasonable time," next after the word "detention", in the second place where it occurs; and
- (c) in subsection (5), by deleting "that power to be exercised," and substituting "the custody officer to exercise his power under subsection (1)."

Amends section 40

4 Section 40 of the principal Act is amended—

- (a) in subsection (1)(d), by deleting "18" and substituting "16";
- (b) in subsection (4), by deleting "written";
- (c) in subsection (5), by deleting "written"; and
- (d) in subsection (6), by deleting "written".

Amends section 41

5 Section 41(4) of the principal Act is amended by inserting the words "or above" next after "superintendent".

Amends section 42

6 Section 42 of the principal Act is amended—

- (a) in subsection (1), by repealing paragraph (b) and substituting the following paragraph—
 - "(b) in the case of a person who has been arrested but not charged, by a custody sergeant, after six hours and thereafter, by an inspector, both of whom are to be persons who have not been directly involved in the investigation."; and

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- (b) in subsection (3)—
- (i) by repealing paragraph (a) and substituting the following paragraph—
 - “(a) the first review shall be not later than six hours after the person arrested, arrives at the police station;”;
 - (ii) in paragraph (b), by deleting “nine” and substituting “twelve”; and
 - (iii) in paragraph (c), by deleting “nine” and substituting “twelve”.

Amends section 44

- 7 Section 44 of the principal Act is amended—
- (a) in subsection (1), by deleting “24” and substituting “42”;
 - (b) by repealing subsection (2) and substituting the following subsection—
 - “(2) The time from which the period of detention of a person is to be calculated (in this Act referred to as “the relevant time”)—
 - (a) in the case of a person arrested outside Bermuda, shall be the time at which that person arrives at the first police station to which he is taken in Bermuda;
 - (b) in the case of a person who—
 - (i) attends voluntarily at a police station; or
 - (ii) accompanies a police officer to a police station without having been arrested,and is arrested at a police station, the time of his arrest; and
 - (c) in any other case, except where subsection (5) applies, the time at which the person arrested arrives at the first police station to which he is taken after his arrest.”;
 - (c) in subsection (5), by deleting “24” and substituting “42”; and
 - (d) in subsection (6), by deleting “24” and substituting “42”.

Amends section 45

- 8 Section 45 of the principal Act is amended—
- (a) in subsection (1)—
 - (i) by deleting “who is responsible for the police station at which a person is detained”;
 - (ii) in paragraph (b), by deleting “arrestable” and substituting “indictable”; and
 - (iii) by deleting “36” and substituting “54”;

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- (b) in subsection (2), by deleting “36” wherever it occurs and substituting “54”;
- (c) in subsection (3)—
 - (i) in paragraph (a), by deleting “more than 24” and substituting “later than 42”; and
 - (ii) in paragraph (b), by deleting “second” and substituting “third”; and
- (d) in subsection (9)—
 - (i) by deleting “36” and substituting “54”; and
 - (ii) in paragraph (b), by deleting “46” and substituting “45A”.

Inserts section 45A

9 The principal Act is amended by inserting the following section next after section 45—

“Authorisation of continued detention by superintendent

45A (1) Where a police officer of the rank of superintendent has reasonable grounds for believing that—

- (a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is an indictable offence; and
- (c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 66 hours after the relevant time.

(2) Where an officer mentioned in subsection (1), has authorised the keeping of a person in police detention for a period expiring less than 66 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 66 hours after the relevant time, if the conditions specified in subsection (1) are still satisfied when he gives the authorisation.

(3) No authorisation under subsection (1) shall be given in respect of any person—

- (a) later than 54 hours after the relevant time; or
- (b) before the fourth review of his detention under section 42 has been carried out.

(4) Where an officer authorises the keeping of a person in police detention under subsection (1), it shall be his duty—

- (a) to inform that person of the grounds for his continued detention; and

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(b) to record the grounds in that person's custody record.

(5) Before determining whether to authorise the keeping of a person in detention under subsection (1) or (2), an officer shall give—

(a) that person; or

(b) any barrister and attorney representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(6) Subject to subsection (7), the person in detention or his barrister and attorney may make representations under subsection (5) either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(8) Where—

(a) an officer authorises the keeping of a person in detention under subsection (1); and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by section 59, 60 or 61,

the officer—

(i) shall inform him of that right;

(ii) shall decide whether he should be permitted to exercise it;

(iii) shall record the decision in his custody record; and

(iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(9) Where an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2), he shall be released from detention, either on bail or without bail, not later than 66 hours after the relevant time, unless—

(a) he has been charged with an offence; or

(b) his continued detention is authorised or otherwise permitted in accordance with section 46.

(10) A person released under subsection (9) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 50.”.

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Amends section 46

10 Section 46 of the principal Act is amended—

- (a) in subsection (4)—
 - (i) by deleting “or section 47”; and
 - (ii) in paragraph (b), by deleting “a serious arrestable” and substituting “an indictable”;
- (b) in subsection (5)—
 - (i) by deleting “Subject to” and substituting “Subject to section 47(9) and”;
 - (ii) in paragraph (a), by deleting “36” and substituting “66”; and
 - (iii) in paragraph (b)(i), by deleting “36” and substituting “66”;
- (c) in subsection (6)(b)(i), by deleting “36” and substituting “66”;
- (d) in subsection (7)(a), by deleting “36” and substituting “66”;
- (e) in subsection (8)(b), by deleting “36” and substituting “66”;
- (f) in subsection (12), by deleting “36” and substituting “30”; and
- (g) in subsection (15)—
 - (i) in paragraph (a), by deleting “24” and substituting “42”; and
 - (ii) in paragraph (b), by inserting “or 45A” next after “45”.

Amends section 47

11 Section 47 of the principal Act is amended—

- (a) in subsection (3)(a), by deleting “36” and substituting “30”; and
- (b) by inserting the following subsection next after subsection (8)—

“(9) Where an officer of the rank of superintendent or above is satisfied that an application under this section cannot be heard because a Magistrate will not be available on a particular day, he shall order a further period of detention—

- (a) at 12 hourly intervals; or
- (b) at the expiration of 96 hours from the relevant time,

whichever is sooner, until such time as the magistrates court can hear the application.”.

Amends section 48

12 Section 48(1) of the principal Act is amended by deleting “and 45” and substituting “, 45 and 45A”.

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Amends section 49

13 Section 49 of the principal Act is amended by repealing subsections (2), (3), (4) and (6).

Amends section 51

14 Section 51(2) of the principal Act is amended by inserting “,” next after “42(11)”.

Amends section 52

15 Section 52 of the principal Act is amended—

- (a) by deleting “written”;
- (b) in paragraph (a), by deleting “24” and substituting “42”;
- (c) in paragraph (b), by deleting “for warrants” and substituting “made under sections 47 and 48”; and
- (d) in paragraph (c), by deleting “warrant” and substituting “authorisation”.

Amends section 55

16 Section 55 of the principal Act is amended—

- (a) in subsection (12), by inserting “or a person employed by the Bermuda Police Service” next after “officer”; and
- (b) in subsection (13), by inserting “or person employed by the Bermuda Police Service” next after “officer”.

Amends section 57

17 Section 57 of the principal Act is amended—

- (a) by repealing subsection (1)(b) and substituting the following paragraph—
 - “(b) that a person who has been arrested and is in police custody may have a controlled drug concealed on him;”; and
- (b) in subsection (8)(d), by inserting next after the word “purposes”, the words “, other than at a police station”.

Amends section 57A

18 Section 57A of the principal Act is amended—

- (a) in subsection (7), by deleting “written”; and
- (b) in subsection (8), by deleting “written”;

Amends section 58

19 Section 58 of the principal Act is amended by deleting “he is brought to a police station” and substituting “his detention is authorised”.

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Amends section 60

20 Section 60 of the principal Act is amended—

- (a) in subsection (2)(a) by deleting “a serious arrestable” and substituting “an indictable”;
- (b) in subsection (3) by deleting “36” and substituting “42”;
- (c) in subsection (5)(a) by deleting “a serious arrestable” and substituting “an indictable”; and
- (d) in subsection (6)(a) by deleting “serious arrestable” and substituting “indictable”.

Amends section 61

21 Section 61 of the principal Act is amended—

- (a) in subsection (5), by deleting “36” and substituting “42”; and
- (b) by inserting the following subsection next after subsection (13)—

“(14) The authorisation under subsection (6)(b) to delay a request by a person arrested and held in custody or a police station, to consult a barrister and attorney under subsection (1), shall be reviewed by a superintendent, every 12 hours.”.

Repeals sections 68 and 69

22 Sections 68 and 69 of the principal Act are repealed.

Amends section 101

23 Section 101(6)(a) of the principal Act is amended by deleting “written”.

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EXPLANATORY MEMORANDUM

The Bill for consideration is the Police and Criminal Evidence Amendment (No. 2) Act 2010.

Clause 2 amends section 35 of the Police and Criminal Evidence Act 2006 (hereafter referred to as “the principal Act”) to delete the word “written”, to put beyond doubt, that “record” refers to any type of record.

Clause 3 amends section 39 of the principal Act as a housekeeping exercise to provide for clarity.

Clause 4 amends section 40 of the principal Act to change the ages to make them synchronise with ages in other provisions of the principal Act and to put beyond doubt that “record” refers to any type of record.

Clause 5 amends section 41 of the principal Act to include additional ranks above that of superintendent, to make room for the unavailability of a superintendent.

Clause 6 amends section 42 of the principal Act in pursuance of the UK Home Office PACE Review Report 2008. This Report recommends that the first detention review should be reduced from inspector to custody sergeant. Subsequent reviews have been increased from 9 hours to 12 hours.

Clause 7 seeks to amend section 44 of the principal Act.

Clause 8 seeks to amend section 45 of the principal Act.

Clause 9 inserts a new section 45A into the principal Act. The cumulative effect of clauses 7, 8 and 9 is that due to the style and limited resources of the Bermuda Police Service and various strangulations in the investigation of crimes, i.e. forensic tests, expert opinions etc., it was agreed that the existing 24 hour and further 36 hour time limits to detain someone without charge would present significant time constraint challenges on the Police Service. Therefore the inspector review limit has been increased from up to 24 hours, to up to 42 hours. The next review has been raised to between 42 hours and 54 hours and is to be made by a chief inspector but only for serious offences i.e. indictable offences. A third tier has been introduced at superintendent level from 54 hours to 66 hours.

Clause 10 amends section 46 of the principal Act so that among other things, a magistrate should be able to order a further 30 hour detention; up to a maximum of 96 hours total time in custody.

Clause 11 amends section 47 of the principal Act. Section 47 deals with taking a person before a court for extended detention. It has however been recognised that the opening of a magistrates court may not always be possible at weekends and on public holidays. The amendment allows a superintendent to authorise further detention at 12 hourly reviews, up to a maximum 96 hours, if no court can be opened to hear an application.

Clause 12 amends section 48 of the principal Act as a housekeeping exercise.

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Clause 13 amends section 49 of the principal Act to delete subsections (2), (3), (4) and (6) because of the new power of superintendents in clause 12, when a court is not sitting.

Clause 14 amends section 51(2) of the principal Act as a housekeeping exercise.

Clause 15 amends section 52 of the principal Act to delete the restrictive word “written”, to enable the term “record”, to now incorporate any type of record.

Clause 16 amends section 55 of the principal Act. The purpose of this amendment is to extend the power to search detained persons, to civilians employed by the Bermuda Police Service. Consideration may be given in the future, to the employment of civilian jailors to assist police officers.

Clause 17 amends section 57 of the principal Act. The substitution of subsection (1)(b) is to enable an officer of at least the rank of inspector to authorise an intimate search of a detained person who may have acquired controlled drugs while in custody. The amendment in subsection (8)(d) is to broaden the category of places such intimate searches can be conducted to include any type of medical facility.

Clause 18 amends section 57A of the principal Act to delete the restrictive word “written”, to enable the term “record”, to now incorporate any type of record.

Clause 19 amends section 58 of the principal Act as a housekeeping exercise.

Clause 20 amends section 60 of the principal Act. Criteria for offences are widened here from serious arrestable offence to indictable, in relation to withholding a detainee’s right to have someone informed of their arrest. This is essentially to assist the police to search the premises of a detainee before the detainee can alert other persons, like family members and co-defendants, about the search.

Clause 21 amends section 61 of the principal Act to among other things, insert a new subsection (14) to permit a superintendent to review the authorisation under section 61(6) (b) to delay a request by a person arrested and held in custody or a police station, to consult a barrister and attorney under subsection (1) of that section.

Clause 22 repeals sections 68 and 69 of the principal Act. These two sections dealt with the option for a drug test after a charge for trigger offences. These provisions are considered unnecessary because, unlike the UK, Bermuda does not have to keep the statistical data the UK has to keep under the equivalent provisions of PACE UK.

Clause 23 amends section 101(6)(a) of the principal Act as a housekeeping exercise.