

A BILL

entitled

POLICE AND CRIMINAL EVIDENCE AMENDMENT ACT 2010

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:

Citation

1 This Act may be cited as the Police and Criminal Evidence Amendment Act 2010.

Amends section 29

2 Section 29 of the Police and Criminal Evidence Act 2006 (in this Act referred to as "the principal Act") is amended by inserting the following subsections next after subsection (6)—

(6A) A person arrested by a police officer at any place other than a police station must be released without bail if the condition in subsection (6B) is satisfied.

(6B) The condition is that, at any time before the person arrested reaches a police station, a police officer is satisfied that there are no grounds for keeping him under arrest.

(6C) A police officer who releases a person under subsection (6A) shall record the fact that he has done so.

(6D) The police officer shall make the record as soon as is practicable after the release."

Amends section 41

3 Section 41(4) of the principal Act is amended by deleting "or who is responsible for the police station for which the custody officer is acting as custody officer".

Amends section 57

4 Section 57(1)(b) of the principal Act is amended by deleting "that such a person" and substituting "that a person who has been arrested and is in police custody".

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Inserts section 57A

5 The principal Act is amended by inserting the following section next after section 57—

“X-rays and ultrasound scans

57A (1) If an officer of at least the rank of inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—

- (a) may have swallowed a controlled drug; and
- (b) was in possession of it with the appropriate criminal intent before his arrest,

the officer may authorise that an X-ray is taken of the person or an ultrasound scan is carried out on the person, or both.

(2) An X-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an X-ray is taken or an ultrasound scan is carried out, an officer of at least the rank of inspector must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.

(4) An X-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

- (a) a hospital;
- (b) a registered medical practitioner’s surgery; or
- (c) some other place used for medical purposes.

(5) The custody record of the person must also state—

- (a) the authorisation by virtue of which the X-ray was taken or the ultrasound scan was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.

(6) The information required to be recorded under subsection (5) must be recorded as soon as practicable after the X-ray has been taken or ultrasound scan carried out, as the case may be.

(7) The Commissioner of Police shall keep written records showing on an annual basis information about X-rays and ultrasound scans which have been carried out under this section.

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(8) The written records about X-rays and ultrasound scans kept under subsection (7) must be kept separate from any other records and must include—

- (a) the total number of X-rays;
- (b) the total number of ultrasound scans;
- (c) the results of the X-rays; and
- (d) the results of the ultrasound scans.

(9) Subject to the right to remain silent, where the appropriate consent to an X-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer;
- (b) a judge, in deciding whether to grant an application made by the accused for the dismissal of any of the charges; and
- (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(10) In this section “appropriate criminal intent”, “controlled drug” and “suitably qualified person” have the same meanings as in section 57 (14).”.

Amends section 72

6 Section 72(1) of the principal Act is amended in the definition of “appropriate consent” —

- (a) in paragraph (a) by deleting “18” and substituting “17”;
- (b) in paragraph (b) by deleting “16” and substituting “14”; and
- (c) in paragraph (c) by deleting “16” and substituting “14”.

Consequential amendments to the Criminal Code Act 1907

7 The Criminal Code Act 1907 is amended—

- (a) in section 235(3) by deleting “Justice of the Peace, or”; and
- (b) in section 236 by deleting “Justice of the Peace or” wherever it occurs.

Commencement

8 (1) This Act shall come into operation on such day as the Minister may appoint by Notice published in the Gazette.

(2) A Notice under subsection (1) may appoint different days for different provisions of this Act to come into operation.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Police and Criminal Evidence Act 2006 (hereafter referred to as “the principal Act”).

Clause 1 is the short title.

Clause 2 amends section 29 of the principal Act to make it a requirement that a person arrested by a police officer at any place other than a police station must be released without bail if at any time before the person arrested reaches a police station, a police officer is satisfied that there are no grounds for keeping the arrested person under arrest. This provision would be used for instance, when a person was lawfully arrested at the time of arrest but subsequent information indicates that the arrested person is no longer considered a suspect.

Clause 3 amends section 41(4) of the principal Act to avoid a conflict of custody decision between a custody sergeant and an officer of a higher rank, who may be the Inspector in charge of a police station trying to overrule the custody sergeant.

Clause 4 amends section 57(1)(b) of the principal Act to make an editorial change to that section.

Clause 5 inserts a new section 57A into the principal Act. The new section 57A authorises an officer of the rank of inspector and above to formally require an arrested person to take an X-ray or an ultrasound scan or both, where he has reasonable grounds to believe that an arrested person may have swallowed a controlled drug and was in possession of it with the appropriate criminal intent before his arrest.

Clause 6 amends section 72(1) of the principal Act in the definition of “appropriate consent” to make changes to the existing ages. These changes are necessary to make them conform to other references to age in the principal Act and the PACE Codes.

Clause 7 makes consequential amendments to the Criminal Code Act 1907 to remove the power of Justices of the Peace to issue warrants of arrest under sections 235(3) and 236 of that Act.

Clause 8 gives power to the Minister to bring the Act into operation.