

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE
NO. 2,621 of 18th July 1991**

I ASSENT,

ADREW CARTER,

ACTING GOVERNOR.

18th July, 1991.



GIBRALTAR.

No. 29 of 1991.

AN ACT to amend the Criminal Procedure Act.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Criminal Procedure (Amendment) (No. 2) Act 1991 and shall come into operation on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes.

Amendment to Part 2.

2. Part 2 of the Criminal Procedure Act (hereinafter called "the principal Act") is amended by omitting the subheading "Photographs and fingerprints" and substituting therefor the sub-heading "Photographs, fingerprints, other prints and samples".

Amendment to section 39.

3. Section 39 of the principal Act is amended -

(a) by omitting the marginal note thereto and substituting the following marginal note -

"Power to take measurements, photographs, fingerprints, other prints and samples.";

(b) by omitting sub-section (1) and substituting therefor the following new sub-section

"(1) Subject to section 40A it shall be lawful for any Police Officer to take and record for the purpose of identification the measurements, photographs, fingerprints, other prints, non-intimate samples and samples of saliva or urine of any person not less than 14 years old, who may from time to time be in lawful custody:

Provided that if such measurements, photographs, fingerprints, other prints and samples are taken of a person who is discharged or acquitted by a court, such measurements, photographs, fingerprints, other prints and samples and all copies and records of them shall be destroyed.";

(c) in sub-section (2) by omitting the words "or fingerprints" and substituting therefor a comma and the words "fingerprints, other prints and non-intimate samples".

(d) by inserting a new sub-section in the following terms—

"(3) Subject to section 40A it shall be lawful for any Police Officer to authorise a registered medical practitioner to take and record for the purpose of identification an intimate sample or intimate samples of any person not less than 14 years old, who may from time to time be in lawful custody:

Provided that if such sample or samples are taken of a person who is discharged or acquitted by a court, such sample or samples and all copies and records of them shall be destroyed.".

Amendment to section 40.

4. Section 40 of the principal Act is amended—

(a) in sub-section (1) by omitting the words "and the fingerprints" and substituting therefor a comma and the words "fingerprints, other prints and non-intimate samples";

(b) in sub-sections (2), (3) and (4) by omitting the words "and fingerprints" wherever they appear and substituting therefor a comma and the words "fingerprints, other prints and non-intimate samples".

New section 40A.

5. The principal Act is amended by inserting a new section 40A in the following terms -

"Other prints and samples.

40A (1) For the purposes of this section and sections 39 and 40 of this Act—

(a) "other prints" includes palm prints, footprints and prints of any other part of the anatomy which may be taken and recorded for the purposes of identification;

(b) "non-intimate samples" means-

(i) a sample of hair other than pubic hair;

(ii) a sample taken from a nail or from under a nail;

(iii) a swab taken from any part of a person's body other than a body orifice;

(c) "intimate sample" means a sample of blood, semen or any other tissue fluid, urine, saliva, or pubic hair or a swab taken from the body orifice of a person.

(2) An intimate sample other than a sample of urine or saliva may only be taken from a person by a registered medical practitioner.

(3) Where any person refuses to submit to the taking of an intimate sample without good cause, in any proceedings against that person for an offence

(a) the court, in determining—

(i) whether to commit that person for trial; or

(ii) whether there is a case to answer; and

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(b) 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; and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against a person in relation to which the refusal is material."

Passed by the Gibraltar House of Assembly on the 9th day of July. 1991

C M COOM.

Clerk to the Assembly