

South Australia

Summary Offences (Medical Examination of Suspects) Amendment Bill 2007

A BILL FOR

An Act to amend the *Summary Offences Act 1953*; and to make a related amendment to the *Victims of Crime Act 2001*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Summary Offences (Medical Examination of Suspects) Amendment Act 2007*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Summary Offences Act 1953*

3—Insertion of section 82A

10 After section 82 insert:

82A—Medical examination of suspects

- 15 (1) If a person believes that, as a result of the commission of an indictable offence, he or she may have come into prescribed contact with blood, semen, saliva or any other bodily fluid from the offender, the person may request that a person arrested on suspicion of the offence (the *suspect*) be subject to a medical examination in accordance with this section.
- 20 (2) A police officer of or above the rank of inspector may, if satisfied that—
 - (a) a request has been properly made under subsection (1); and
 - (b) the suspect is of or over 16 years of age; and
 - (c) the medical examination is reasonable in the circumstances,

authorise the carrying out of a medical examination on the suspect in accordance with this section.

Example—

5 The police officer might decline to issue the authorisation on the basis that the medical examination is not reasonable in the circumstances if, for example, the suspect has authorised the release of medical records that satisfactorily establish whether he or she was capable of transmitting a disease through prescribed contact.

(3) The authorisation—

- 10 (a) must be in writing and set out the name of the suspect and the date on which, and time at which, the authorisation is issued; and
- (b) may include any consequential directions relating to the carrying out of the examination; and
- 15 (c) may be varied or revoked at any time.

(4) A copy of the authorisation must be provided to the suspect.

(5) If an authorisation is issued under this section in relation to a suspect the following provisions apply:

- 20 (a) the medical examination so authorised must be carried out as soon as reasonably practicable and the suspect may be held in custody until the medical examination is carried out;
- (b) the medical examination must be carried out by a person who is qualified as required by the regulations to carry out such medical examinations (but such person may be assisted by a police officer or other person);
- 25 (c) the person carrying out the medical examination, or a person assisting such a person, may use reasonable force to carry out the examination;
- (d) the medical examination—
- 30 (i) must be carried out humanely and with care—
- (A) to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and
- (B) to avoid inflicting unnecessary physical harm, humiliation or embarrassment; and
- 35 (ii) must not be carried out in the presence or view of more persons than are necessary for properly carrying out the examination;
- 40 (e) the person carrying out the examination must only carry out such tests and take such samples as are sufficient for the purpose of determining whether the suspect is capable of transmitting a disease to another person through prescribed contact.

(6) A person who obstructs or resists a medical examination authorised under this section is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(7) If a medical examination is conducted on a suspect under this section—

(a) the results of analysis of any samples of biological material obtained as a result of the examination must be provided to the person on whose request the examination was carried out; and

(b) all other copies of the results of analysis and all samples of biological material obtained as a result of the examination must be destroyed.

(8) For the purposes of subsection (7), results and samples will be taken to have been destroyed if it is not possible to identify the person to whom the results relate or from whom the samples were taken.

(9) Evidence relating to, or information obtained as a result of, the conduct of a medical examination on a suspect under this section is not admissible in any criminal proceedings against the suspect, other than proceedings for an offence against subsection (6).

(10) No civil or criminal liability is incurred by a person who carries out, or assists in carrying out, a medical examination under this section for an act or omission if—

(a) the person genuinely believes that the examination is authorised under this section; and

(b) the act or omission is reasonable in the circumstances.

(11) The powers given by this section are in addition to, and do not derogate from, any other powers relating to suspects.

(12) The regulations may make further provision in relation to the making of requests, the issue of authorisations and the conduct of medical examinations under this section.

(13) In this section—

prescribed contact means any contact by which blood, semen, saliva or a bodily fluid may have been transmitted into the anus, vagina, a mucous membrane or broken skin of a person.

Part 3—Related amendment to *Victims of Crime Act 2001*

4—Amendment of section 11—Victim to be informed about access to health and welfare services

Section 11—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) If a victim of an indictable offence may have come into contact with blood, semen, saliva or any other bodily fluid from the offender, the victim must be informed about the right to request a medical examination of the suspect.¹

1. See section 82A of the *Summary Offences Act 1953*.