

NORTHERN TERRITORY OF AUSTRALIA
JUVENILE JUSTICE AMENDMENT ACT (NO. 3) 1998

No. 86 of 1998

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NORTHERN TERRITORY OF AUSTRALIA

No. 86 of 1998

AN ACT

to amend the *Juvenile Justice Act*

[Assented to 9 December 1998]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Juvenile Justice Amendment Act (No. 3) 1998*.

2. COMMENCEMENT

This Act comes into operation on the commencement of the *Police Administration Amendment Act (No. 2) 1998*.

3. PRINCIPAL ACT

The *Juvenile Justice Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended —

- (a) by inserting after the definition of "Director" in subsection (1) the following:

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"intimate procedure" includes the following procedures:

- (a) examining the body, either internally or externally;
 - (b) taking from the body a substance on or in the body;
 - (c) taking a sample of a substance on or in the body;
 - (d) taking a sample of blood (other than by a swab or washing from an external part of the body);
 - (e) taking a sample of pubic hair;
 - (f) taking a sample from the external genital or anal area or the buttocks by swab or washing;
 - (g) taking a sample from the external genital or anal area or the buttocks by vacuum suction, scraping or lifting by tape;
 - (h) taking a dental impression or an impression of a bite mark;
 - (j) taking a photograph, or an impression or cast, of a wound to the genital or anal area or the buttocks;
 - (k) taking an X ray;
 - (m) taking a sample of urine;
 - (n) in the case of a female —
 - (i) examining the breasts;
 - (ii) taking a sample from the breasts by swab or washing;
 - (iii) taking a sample from the breasts by vacuum suction, scraping or lifting by tape; and
 - (iv) taking a photograph, or an impression or cast, of a wound to the breast;"
- (b) by inserting after the definition of "member" in subsection (1) the following:

"non-intimate procedure" includes the following procedures:

- (a) taking a sample of saliva or a sample by buccal swab;
- (b) examining a part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (c) taking a sample of hair other than pubic hair;
- (d) taking a sample by swab or washing from any external part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (e) taking a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (f) taking a hand print, fingerprint, footprint or toe print;
- (g) taking a photograph of, or an impression or cast of a wound to, a part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (h) taking a photograph of a person;"; and

(c) by adding at the end the following:

"(4) A juvenile is under suspicion of committing a crime if a member of the Police Force suspects the person of having committed the crime on reasonable grounds."

5. REPEAL AND SUBSTITUTION

Section 31 of the Principal Act is repealed and the following substituted:

"31. INTIMATE PROCEDURES

"(1) Subject to section 25 and this section, an authorized officer or a member of the Police Force for the time being in charge of a police station may arrange for a medical practitioner or registered dentist to carry out an intimate procedure on a juvenile who —

- (a) is in lawful custody in respect of an offence; or

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- (b) has been summoned to appear in respect of proceedings against the juvenile for an offence,

if the authorized officer or member believes on reasonable grounds that the procedure may provide evidence relating to the offence or any other offence punishable by imprisonment.

"(2) The intimate procedure may be carried out only after the approval of a magistrate is obtained.

"(3) An authorized officer or a member of the Police Force for the time being in charge of a police station may apply to a magistrate for the approval —

(a) in person; or

(b) if that is not practicable — by telephone.

"(4) The magistrate may approve an intimate procedure being carried out if, after hearing —

(a) the authorized officer or the member of the Police Force; and

(b) the juvenile to whom the application relates,

he or she is satisfied that the authorized officer or member has reasonable grounds for the belief referred in subsection (1).

"(5) The approval is to —

(a) be in writing; and

(b) specify the intimate procedure that may be carried out.

"(6) A copy of the approval is to be sent to the authorized officer or the member of the Police Force.

"(7) The authorized officer or the member of the Police Force may proceed under the approval despite not having received it if he or she is informed of it by the magistrate by telephone.

"(8) A medical practitioner or registered dentist may carry out the intimate procedure in accordance with the approval given under subsection (4).

"(9) A member of the Police Force —

(a) may assist a medical practitioner or registered dentist to carry out the intimate procedure; and

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- (b) may use reasonable force when assisting the medical practitioner or registered dentist.

"(10) Before arranging for a medical practitioner or registered dentist to carry out the intimate procedure, a member of the Police Force must inquire whether the juvenile or the person who is with the juvenile in accordance with section 25 wishes to have a medical practitioner or registered dentist of his or her own choice present when the procedure is carried out.

"(11) If the juvenile or person with the juvenile wishes to have a medical practitioner or registered dentist present, the member of the Police Force must —

- (a) provide reasonable facilities to enable the juvenile or person to arrange for a medical practitioner or a registered dentist to be present; and
- (b) unless it would be impracticable to do so — arrange for the intimate procedure to be carried out at a time when the medical practitioner or registered dentist can be present.

"(12) After the intimate procedure is carried out, the juvenile or person with the juvenile must be provided with a copy of the report of the medical practitioner or registered dentist provided in respect of the procedure if the juvenile or person requests it.

"(13) No action or proceeding, civil or criminal, can be commenced against a medical practitioner or registered dentist in respect of anything reasonably done by him or her in carrying out an intimate procedure under this section.

"(14) Nothing in this section prevents a medical practitioner or registered dentist from examining a juvenile in lawful custody at the request of the juvenile or treating the juvenile for an illness or injury.

"(15) In this section, 'registered dentist' means a dentist or dental specialist registered under the *Dental Act*.

"31A. CERTAIN NON-INTIMATE PROCEDURES ON JUVENILES IN CUSTODY

"(1) Subject to section 25, an authorized officer or a member of the Police Force for the time being in charge of a police station may carry out or cause to be carried out an identifying non-intimate procedure on a juvenile who —

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- (a) is in lawful custody in respect of an offence; or
- (b) has been summoned to appear in respect of proceedings against the juvenile for an offence,

if the approval of a magistrate is obtained.

"(2) Despite subsection (1), an authorized officer or the member of the Police Force for the time being in charge of a police station may carry out or cause to be carried out an identifying non-intimate procedure on a juvenile who is in lawful custody in respect of an offence if the juvenile appears to the authorized officer or member to be 14 years of age or older.

"(3) An authorized officer or the member of the Police Force for the time being in charge of a police station may apply to a magistrate for the approval —

- (a) in person; or
- (b) if that is not practicable — by telephone.

"(4) The magistrate may approve an identifying non-intimate procedure being carried out after hearing —

- (a) the authorized officer or the member of the Police Force; and
- (b) the juvenile to whom the application relates.

"(5) The approval is to —

- (a) be in writing; and
- (b) specify the identifying non-intimate procedure that may be carried out.

"(6) A copy of the approval is to be given to the authorized officer or the member of the Police Force.

"(7) The authorized officer or the member of the Police Force may proceed under the approval despite not having received it if he or she is informed of it by the magistrate by telephone.

"(8) The authorized officer or the member of the Police Force may use reasonable force in carrying out the identifying non-intimate procedure.

"(9) In this section, 'identifying non-intimate procedure' means taking —

- (a) prints of the hands, fingers, feet or toes; or

(b) photographs.

"31B. NON-INTIMATE PROCEDURES ON JUVENILES SUSPECTED OF COMMITTING CRIMES OR IN LAWFUL CUSTODY

"(1) Subject to section 25 and this section, an authorized officer or a member of the Police Force may carry out or cause to be carried out a non-intimate procedure on a juvenile who —

- (a) is under suspicion of committing a crime;
- (b) is in lawful custody charged with an offence punishable by imprisonment; or
- (c) has been summoned to appear in respect of proceedings against the juvenile for an offence punishable by imprisonment.

"(2) The non-intimate procedure may be carried out —

- (a) if the approval of a magistrate is obtained; or
- (b) if the approval of a member of the Police Force of the rank of Superintendent or a higher rank is obtained.

"(3) An approval under subsection (2)(b) must not be given unless the member referred to in the subsection is satisfied the juvenile is 14 years of age or older.

"(4) An authorized officer or a member of the Police Force may apply to a magistrate for the approval —

- (a) in person; or
- (b) if that is not practicable — by telephone.

"(5) The magistrate may approve a non-intimate procedure being carried out after hearing —

- (a) the authorized officer or the member of the Police Force; and
- (b) the juvenile to whom the application relates.

"(6) The approval is to —

- (a) be in writing; and
- (b) specify the non-intimate procedure that may be carried out.

"(7) A copy of the approval is to be sent to the authorized officer or the member of the Police Force.

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"(8) The authorized officer or the member of the Police Force may proceed under the approval despite not having received it if he or she is informed of it by the magistrate by telephone.

"(9) Subject to this section, an authorized officer or a member of the Police Force may cause a sample by buccal swab of a person to be taken by directing the juvenile to provide the sample.

"(10) A juvenile is not to be taken to have provided a sample unless the sample is sufficient to enable an analysis of it to be carried out.

"(11) The authorized officer or the member of the Police Force may use reasonable force in carrying out the non-intimate procedure."

6. NEW SECTION

The Principal Act is amended by inserting in Part VIII after section 70A the following:

"70B. BUCCAL SWABS

"(1) A juvenile detained in a detention centre for a crime must provide a sample by buccal swab to a person authorised under subsection (3) when directed to do so by the superintendent of the detention centre.

"(2) A juvenile is not to be taken to have provided a sample unless the sample is sufficient to enable an analysis of it to be carried out.

"(3) The Director may authorise a person for the purposes of subsection (1).

"(4) A person authorised under subsection (3) may use reasonable force to obtain a sample by buccal swab from a detainee if the detainee refuses to provide the sample when directed to do so by the superintendent of the detention centre.

"(5) As soon as practicable after the sample is obtained, the superintendent of the detention centre must deliver the sample to the Commissioner of Police.

"(6) No action or proceeding, civil or criminal, can be commenced against a person in relation to the exercise of the power conferred on the person by subsection (4)."
