

REPUBLIC OF SOUTH AFRICA

**CRIMINAL LAW
(FORENSIC PROCEDURES)
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No 45616 of
10 December 2021)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B 25—2021]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To make provision for the full implementation of certain transitional arrangements contained in the Criminal Law (Forensic Procedures) Amendment Act, 2013; to provide for the enforcement of the obligation to submit to the taking of a buccal sample; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act any word or expression to which a meaning has been assigned in the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013), bears the meaning so assigned thereto. 5

Amendment of section 7 of Act 37 of 2013

2. Section 7 of the Criminal Law (Forensic Procedures) Amendment Act, 2013, is hereby amended—

(a) by the substitution for subsection (7) of the following subsection: 10

“(7) (a) The National Commissioner of the South African Police Service must, with the assistance of the National Commissioner of Correctional Services, ensure that a buccal sample is taken from any person serving a sentence of imprisonment in respect of any offence listed in Schedule 8 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977)— 15

(i) before the release of the person, if the buccal sample had not already been taken upon his or her arrest; or

(ii) who is released before his or her sentence is completed either on parole or under correctional supervision by a court. 20

(b) The National Commissioner of Correctional Services, or his or her delegate, must submit a report to the National Commissioner of the South African Police Service—

(i) on the prescribed information of persons contemplated in paragraph (a), at least three months prior to the planned release date of such persons; and 25

(ii) on the implementation of paragraph (a), on a quarterly basis.

- (c) The National Commissioner of the South African Police Service must on a quarterly basis submit a written report to the Minister on the progress made regarding the taking of buccal samples from persons contemplated in paragraph (a).”; and
- (b) by the insertion after subsection (7) of the following subsections: 5
- “(7A) If a person contemplated in subsection (7) does not consent to the taking of a buccal sample under this section—
- (a) the National Commissioner of the South African Police Service, or his or her delegate, must apply *ex parte* to a judge or a magistrate for a warrant authorising the taking of the buccal sample, which application must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based; and 10
- (b) a judge or magistrate may issue the warrant referred to in paragraph (a) if satisfied that— 15
- (i) the person to whom it relates is a person serving a sentence of imprisonment as contemplated in subsection (7)(a); and
- (ii) the provisions of section 15J(2), (3), (4) or (5) of the South African Police Service Act 1995 (Act No. 68 of 1995), relating to the removal of a forensic DNA profile, do not apply. 20
- (7B) Despite the provisions of section 32(1)(c) of the Correctional Services Act, 1998 (Act No. 111 of 1998), an authorised person assisted by correctional officials may use minimum force against a person who refuses to submit to the taking of a buccal sample under authority of a warrant contemplated in subsection (7A). 25
- (7C) The National Commissioner of the South African Police Service, in consultation with the National Commissioner of Correctional Services, must issue and publish in the *Gazette* national instructions regarding the use of minimum force contemplated in subsection (7B).
- (7D) The provisions of section 32(5) and (6) of the Correctional Services Act, 1998, apply with the necessary changes to the use of force in terms of subsection 7(B).”. 30

Short title and commencement

3. This Act is called the Criminal Law (Forensic Procedures) Amendment Act, 2021, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 35

MEMORANDUM ON THE OBJECTS OF THE CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT BILL, 2021

1. BACKGROUND OF THE BILL

- 1.1 The Criminal Law (Forensic Procedures) Amendment Bill, 2021 (“the Bill”), provides for the insertion of a new provision in respect of the transitional arrangements contained in the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013) (“the Act”), to ensure its full implementation. Section 7(7) of the Act provides for the taking of buccal samples (a sample of a person’s saliva taken from a person’s mouth) from any person convicted of a crime listed in Schedule 8 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), prior to 31 January 2015 (the date of commencement of the Act).
- 1.2 The Act commenced on 31 January 2015 and the period of transition within which the buccal samples ought to have been taken from all convicted Schedule 8 offenders expired on 31 January 2017.
- 1.3 The new provision for taking of buccal samples from all convicted Schedule 8 offenders is aimed at achieving the full implementation of the requirement in the Act of taking buccal samples from all persons who were convicted of Schedule 8 offences.

2. OBJECTS OF THE BILL

- 2.1 The Bill seeks to make a new provision in respect of the full implementation of the transitional arrangements contained in the Act. It also provides for the enforcement of the obligation to submit to the taking of a buccal sample, as well as the reporting obligation in respect thereof.
- 2.2 The primary objective of the Bill is to contribute towards the population of the forensic DNA database which is provided for in the Act, and which is maintained by the South African Police Service, for the purpose of conducting forensic investigations in respect of unresolved crimes. The collection of DNA evidence from persons serving a sentence of imprisonment in respect of any offence listed in Schedule 8 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (convicted Schedule 8 offenders), in the form of buccal samples is crucial to resolving unsolved crimes, especially since such offenders are usually repeat offenders. Furthermore, the successful prosecution and conviction of repeat offenders are essential in reducing high crime rates and protecting members of society, mostly women and children, who are vulnerable to being victims of crimes perpetrated by such offenders.

3. SUMMARY OF THE BILL

- 3.1 The proposed paragraph (a) of section 7(7) in clause 2(a) provides for the taking of buccal samples from convicted Schedule 8 offenders before their release, if buccal samples were not taken upon arrest, or who are released before their sentence is completed either on parole or under correctional supervision by a court. There is no timeframe set for the taking of buccal samples from convicted Schedule 8 offenders.
- 3.2 The proposed paragraph (b) of section 7(7) in clause 2(a) requires the National Commissioner of Correctional Services or his or her delegate to submit a report to the National Commissioner of the South African Police Service, on the prescribed information of convicted Schedule 8 offenders at least three months prior to the planned release date of such persons, and on the implementation of the requirement for taking of buccal samples from convicted Schedule 8 offenders on a quarterly basis.

- 3.3 The proposed paragraph (c) of section 7(7) in clause 2(a) requires the National Commissioner of the South African Police on a quarterly basis to submit a written report to the Minister on the progress made regarding the taking of buccal samples from convicted Schedule 8 offenders. This is in order to ensure that buccal samples are taken from convicted Schedule 8 offenders, and there is no delay simply because there is no timeframe for taking of these samples.
- 3.4 The proposed new section 7(7A) in clause 2(b) provides for the lodging of an application by the National Commissioner of the South African Police Service to a judge or a magistrate for a warrant to compel a convicted Schedule 8 offender who refuses to submit to the taking of his or her buccal sample to submit thereto. This is in order to address the challenge of some convicted Schedule 8 offenders refusing to submit to the taking of their buccal samples.
- 3.5 The Bill provides for the enforcement of an obligation for taking of buccal samples through the proposed new section 7(7B), in clause 2(b), which provides that an authorised person assisted by correctional officials may use minimum force against a person who refuses to submit to the taking of a buccal sample despite being compelled by a judicial warrant.
- 3.6 Furthermore, the proposed new section 7(7C) in clause 2(b) requires the National Commissioner of the South African Police Service, in consultation with the National Commissioner of Correctional Services, to issue and publish in the *Gazette* National Instructions regarding the use of minimum force contemplated in subsection (7B).
- 3.7 It is important to note that in terms of the proposed new section 7(7D), the provisions of section 32(5) and (6) of the Correctional Services Act, 1998, relating to use of force apply with the necessary changes to the use of force requirement as provided for in the proposed new section 7(7B).

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

- 4.1 The Bill has been drafted in conjunction with officials from the Department of Correctional Services, the Legal Division of the South African Police Service and the Forensic Database Management: Quality Management Division of the South African Police Service.
- 4.2 The Bill was submitted to The Presidency, and The Presidency has issued a final Socio Economic Impact Assessment System (“SEIAS”) report in respect of it.

5. FINANCIAL IMPLICATIONS FOR THE STATE

A costing model has been conducted, and it is estimated that the total cost for the implementation of the new Act would be R78 480 000,00. It is envisaged that the funding for the implementation of the new Act shall be covered from monies appropriated to the South African Police Service by Parliament.

6. CONSTITUTIONAL IMPLICATIONS

The Bill shall ensure the effective maintenance of a comprehensive forensic DNA database, in order to enhance the forensic investigative powers and capacity of the South African Police Service. This is expected to have a positive impact on the reduction of high crime rates, and shall contribute to the protection of a person’s constitutional right to freedom and security of a person.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution of Republic of South Africa, 1996, since it contains no provision to which the procedure set out in sections 74 or 76 of the Constitution applies.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not directly affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities and does not pertain to any matter referred to in section 154(2) of the Constitution.

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