

PUBLIC NOTICE

SUBJECT: **ANGUILLA POLICE (AMENDMENT) BILL 2015**

EXTENTION OF TIME FOR PUBLIC CONSULTATIOIN

1. The Government approved the publication of a Bill entitled the Anguilla Police Amendment Act at meeting of Executive Council on Thursday 10 September 2015. On Friday 11 September 2015 the Bill was published in the Gazette and on the Government's website with a public notice inviting comments.
2. The Government wishes to thank all of those who have provided feedback on the draft Bill. Those comments have been considered and continue to be reflected upon.
3. **As a result, the Government would like to extend the period for consultation prior to any first reading of the Bill and the extended deadline is Friday 16 October 2015. The Government welcomes further feedback.**
4. Therefore it is proposed not to proceed with any first reading of the Bill on Tuesday 22nd September 2015 at the sitting of the House of Assembly.

Purpose of the Bill

5. There is concern within Anguilla that it does all it can to challenge and reduce criminal offending, particularly serious offending such as gun crime. This type of offending can devastate victims and their families and affected communities.
6. The public should be able to expect that everything within the power of the law should be done to prosecute crimes where possible. Many members of the public will believe there is a real and pressing need for the most effective police investigations and successful prosecutions so as to bring offenders to justice. That concern is shared within Government, those who investigate crime, such as the police, and those responsible for prosecuting offences such as the Attorney General's Chambers.

Effect of the Bill

7. The effect of the Bill is to reform the law to give police a greater ability to investigate and prosecute offences. This Bill seeks to provide the most effective powers for the police in line with community concern and regional / international best practice.
8. The aim of the Bill is to give the police the power to take non-intimate samples upon a suspect being arrested. Non-intimate samples include swabs taken from the body or samples of hair sample, or nails clipping etc. Non-intimate samples can provide vital evidence once tested - for example to prove or disprove the presence of gun-shot residue or matching of DNA. The power to take non-intimate samples from suspected offenders

on arrest will enable more effective criminal investigations. It will allow the police to increase their ability to obtain sufficient evidence to charge and support the prosecution of offenders. It will also enable those who may be innocent of offences to be cleared without ever being prosecuted.

The current law

9. The current law already allows the police to take non-intimate samples from offenders. Under the Police Act, as amended by the Anguilla Police Amendment Act 2013, the police have the power to take samples from a person once they have been charged with a criminal offence (ie. once the police have sufficient evidence against an offender to prosecute them).
10. A non-intimate sample is currently defined as:
 - (a) a sample of hair other than a pubic hair;
 - (b) a sample taken from a nail or from under a nail;
 - (c) a swab taken from any part of a person's body other than a body orifice;
 - (d) a footprint or a similar impression of any part of a person's body other than a part of his hand.

Changes proposed under the draft Bill

11. The draft Bill does two things:
12. **First, it brings forward the time at which a sample may be taken.** It would allow police to take samples from a person on them being arrested on suspicion of an offence (when there are reasonable grounds to suspect them) rather than on them being charged with a criminal offence (when there is sufficient evidence to prosecute them).
13. This is important because the evidence from non-intimate samples may be the very evidence needed in order for the police to have sufficient evidence in the first place to charge a person with a criminal offence and prosecute them.
14. The current power which only allows the taking of non-intimate samples on charge means that the police may never gain sufficient to charge a person with a criminal offence. This is because they will not be able to take the sample from a suspect who has been arrested so cannot obtain the evidence they need to charge and prosecute them. Alternatively, the results of the tests from the non-intimate sample may not match a suspect and prove they are not guilty of an offence so that they are never prosecuted.
15. **Secondly, it also extends the definition of a non-intimate sample to include saliva and swabs taken from the mouth (buccal swabs).** These additional methods of obtaining samples may, depending on the circumstances, be the more effective methods of extracting necessary evidence such as DNA.

Regional / International Comparison

16. Both of these changes would also bring the law into line with regional and international standards - for example see the Cayman Islands Police Act 2010 (sections 2 and 37) or the UK Police and Criminal Evidence Act 1984 (see section 63).

Safeguards and protection of the rights of suspects

17. A non-intimate sample could not be taken from a person who had not been arrested for a criminal offence. Under the existing law, the police only have the power to arrest a person for a criminal offence if there are reasonable grounds to suspect they have committed it. The police do not have a power to arrest people without such reasonable grounds (ie. arrest people at random without grounds or good reason). Under the existing law, any use of the power of arrest can always be challenged in court for it to decide whether or not the arrest was lawful or not (ie. whether there were reasonable grounds to suspect them of committing an offence).
18. In addition to this safeguard, there would be further safeguards for the protection of the rights of a suspect in Anguilla contained in this Bill not found in many other jurisdictions:
 - a) there will continue to be no power for the police to take intimate samples (body fluids, blood etc.) from suspects – although this is available in many jurisdictions;
 - b) if a suspect does not consent to the taking of a sample and refuses then the matter goes to the Magistrate for the Court to decide whether the taking of the sample is required in the interest of justice or for the purpose of investigating or prosecuting the offence for which the person has been arrested. This is not provided for automatically in many jurisdictions; and
 - c) the records of the sample will be destroyed if the suspect is not charged with a criminal offence or if charged, acquitted at court.
19. Other jurisdictions with constitutions providing similar fundamental constitutional rights do not include all these types of restrictions on the use of the power.
20. The taking of non-intimate samples and intimate samples such as blood, urine and semen. has been examined by the European Court on Human Rights. The Court held the power did not to breach a person's right to an individual's privilege against self-incrimination (ie. a person's right to silence - not to incriminate themselves in respect of a crime of which they are accused).

Further Consultation

21. The Government understands the need to balance the power to give effective powers to the police to fight crime with the need to protect the rights of individuals who may be subject to investigation and that there need to strike a proportionate and fair balance.