

DEPARTMENT OF CORRECTIONAL SERVICES (DCS): IMPLEMENTATION OF THE CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT BILL, B9-2013

1. INTRODUCTION

Section 36(d) (7) of The Criminal Law (Forensic Procedures) Amendment Bill, 2013 provides for the taking of specified bodily samples from certain categories of persons for the purposes of forensic DNA analysis:

- Including “buccal samples” from persons who are in Correctional Facilities and Remand Centres on the implementation date that is determined following the enactment of the Bill; and
- In cases where a buccal sample had not already been taken previously.

The responsibility for ensuring that this is done is placed on the Head of the relevant Correctional Centre or Remand Detention (RD) Facility or his or her delegate who has to ensure compliance before any person is released from a centre under his command.

SAPS, the National Health Laboratory Services, DCS and the Office for Criminal Justice Reform (OCJSR) met on several occasions to review the most appropriate way for obtaining the required buccal samples, including the most effective way of training the people that would be authorised in terms of the Bill to take the required samples. This document deals with the conclusions that have been arrived at and contain the recommendations of the joint working group.

2. BACKGROUND STATISTICS

DCS provided statistical data that was used as a basis for the discussions and recommendations of the working group. The data trends have been consistent for the last number of years and the composition thereof is not expected to undergo material change between now and the date of implementation after enactment of the Bill.

The summary data that is reflected in the table below is based on a snapshot of salient information that has been provided by DCS (note 1).

Snapshot of Statistical Information as at 16 July 2013

Total number of operational Correctional Facilities	239
Sentenced Offenders	108 453
Remand detainees (note 2)	43 468
Total DCS Population (note 3)	151 921
DCS Nurses (Registered in terms of the National Health Act, 2003 (Act No. 61 of 2003))	990 posts 122 vacant
Doctors (Registered in terms of the National Health Act, 2003 (Act No. 61 of 2003))	9 (3 vacancies)
Number of DCS facilities where there are no Health Care personnel	Xxx

Note 1:

The table above contains summary data that has been derived from the more detailed information in the following annexures:

- Annexure A - National Summary: DCS Inmate Population
- Annexure B - DCS Medical Practitioners and Nurses

Note 2:

The RD population is highly volatile and about 50% of the present persons will be released for one or other reason within a period of three months, only to be replaced by similar sized groups of persons who will follow the same cycling pattern through the system within about three months. Because of this phenomenon, as well as the fact that SAPS will begin to take buccal swaps as soon as their detectives have been trained, less than 50% of the RD population will require to be sampled for DNA. The number of remand detainees that are being detained for longer periods are by far in the minority. It is estimated that by the time of the implementation date less than 20% of the RD population would not have been buccal swapped for a DNA sample.

Note 3:

Parolees and Probationers that had previously been released have not been included in the data above. The number of parolees and probationers fluctuate as sentences are completed and more persons are added to the programme, but average around 65 000 at any point in time.

3. IMPLEMENTATION OPTIONS

3.1. Authorised Persons

In addition to selected SAPS and IPID officials, the Bill provides for the taking of buccal swaps by any registered medical practitioner or registered nurse as defined in the National Health Act, 2003 (Act No. 61 of 2003) that provide services to the Department of Correctional Services (DCS) on condition that all such persons shall be authorised. It is estimated that 20 000 of the SAPS and IPID contingent would be trained by September 2014 and that there would be a good distribution of authorised people across all parts of the country. The DCS contingent would only be in the hundreds and only present at selected correctional and remand facilities.

Approach

The provisions of the bill could be met over the term of imprisonment of sentenced offenders and RD's as long as it is done before they are released unconditionally or on parole or on probation. This approach if followed may take several years and even decades and will complicate the keeping of accurate records. A more aggressive approach can be followed and the entire population can be processed in less than two years. The latter option is strongly recommended. The table below is indicative of how such an approach may work.

Total Sentenced 108 000		1	2	3	4	5	6	7	8	9	10	11	12
		9000	9000	9000	9000	9000	9000	9000	9000	9000	9000	9000	9000
Swaps @ Team of two (swap & document)	Number of swaps @ hour	4	4	4	4	4	4	4	4	4	4	4	4
	Productive hours @ day	6	6	6	6	6	6	6	6	6	6	6	6
	Swaps @ day	24	24	24	24	24	24	24	24	24	24	24	24
	Work days per month	22	22	22	22	22	22	22	22	22	22	22	22
	Swaps @ team @ month	528	528	528	528	528	528	528	528	528	528	528	528
	Number of teams needed (1)	17	17	17	17	17	17	17	17	17	17	17	17

Recommended that:

1. All sentenced inmates are processed within 12 - 18 months from the implementation date
2. Teams consisting mainly of trained SAPS officials be established to do this work as the DCS workload is of a once-off nature.
3. That only a select group of DCS Authorised personnel be trained for contingency purposes.
4. Females represent approximately 2.5% of the sentenced population!

Remand Detainees	0 - 3 months	3 - 6 months	6 - 9 months	9 - 12 months	12 - 24 months	24 - 36 months	24 + months	Total
Total Population	21103	7800	4683	2578	5494	1582	805	44045

3.2. DCS Requirements

The need for persons in correctional or RD facilities to be buccal swapped will diminish to almost nil over time. This time will be shortened to a period of less than two years if the more aggressive approach is followed and backlog is eradicated in a project controlled environment, meaning that buccal samples of all the approximately 152 000 retained persons are taken by a given date.

In the long-term the need for the Department of Correctional Services to actually take any buccal samples may at best be in exceptional instances and only where SAPS had not taken the samples upon arrest or at conviction. This does pose the question of who would be best equipped to perform the taking of samples in the project mode, SAPS or DCS.

3.3. Practical Considerations

The taking of buccal samples from inmates in the Correctional or Remand Detention Facility on a large scale basis by DCS medical practitioners and nurses only will be extremely challenging and not practically possible without placing undue stress on already overloaded people who are battling to meet their own professional service delivery commitments and obligations. This document does not deal with the workload of doctors and nurses in correctional and RD facilities save to say that the stated NDOH norm of 1:35 (health care workers/detainee) is exceeded by many factors.

It would be ill advised and irresponsible for DCS to commit to an approach that involved any number of the health care workers over a short or medium period and it would be advisable to consider alternative transitional options.

3.4. Professional Considerations

DCS officials often find themselves in a space where they are mistrusted by detainees and to combat this they play as much of an impartial and neutral role as possible. It is felt by DCS officials that their involvement in what essentially is an investigative and prosecutorial role could be detrimental to their custodial and rehabilitation role.

3.5. Options

There are three basic options for taking buccal samples of detainees:

- a. It is done by DCS Health Care Officials over an extended period
- b. Other DCS officials are also authorised to perform buccal swaps
- c. SAPS officials authorised in terms of the Bill

Both options a) and b) above are workable, but the consensus of the joint planning group was that the DCS option would be sub-optimal for the reasons mentioned above, while it would be relatively easy for SAPS detectives to perform this task as they will be represented in sufficient numbers in all geographies.

Should the SAPS project approach not be acceptable, consideration should be given to permit certain DCS officials to also be included as authorised persons. This will provide a larger and better distributed pool of authorised persons than would be the case if health care workers were used, but it has to be borne in mind that it may compromise the neutral position that DCS tries to maintain with detainees. It also has to be borne in mind that the exercise to capture buccal swaps of present detainees is a once-off intervention and that would amount to wastage when the ongoing role of DCS diminishes in part or totally. The training cost per person amounts to R1200.

Another option would be to outsource the taking of the samples from detainees through a competitive bid process with agreed service delivery requirements. This will also entail costs that would be absorbed in the SAPS baseline budget.

4. Recommendation

It is recommended that the buccal swaps of all categories of detainees are taken by SAPS detectives under supervision and facilitation by DCS and that the intervention be project managed in such a way that the entire detainee population is processed within 18 months from the implementation date.

Consideration may be given that dedicated teams or persons focus on taking the buccal samples from all persons in custody in a particular facility before moving to the next one. This approach, depending on the size of the team, permit that the samples are taken over several months, but if the team consists of ten persons it can be managed that the samples are taken from all inmates within a 12 – 18 month period.

5. SUBMISSION OF THE SAMPLES TO SAPS FORENSIC SCIENCE LABORATORIES (FSLs)

It is important that samples that have been taken from the detainees be transmitted to the SAPS FSL in the shortest possible time. This will be greatly facilitated if SAPS authorised people perform the buccal swaps. In the event

that this (SAPS) is not accepted, a short process will have to be put in place between DCS and the nearest SAPS Service Centre. This can either be done on an ad hoc basis or by fixed arrangement.

Alternatively DCS could utilise a courier service on the SAPS contract to collect and send the samples directly to the SAPS FSL. This may be the most effective transport means and if managed effectively by DCS there should be no storage issues, but it will bring with it additional expenses.

6. COMMUNICATION AND SYSTEMS REQUIREMENTS

DCS will have to maintain an accurate data base of information in respect of detainees who have been buccal swapped. This has to be done for the present detainee population and will have to be recorded in the DCS Admission and Release (A&R System). SAPS, on the other hand, will have to provide DCS with assurance that buccal swaps of all newly admitted detainees have been taken. The J7 court order will be the best vehicle for this purpose until an automated link can be established through the IJS. The J7 Court Order will be amended to cater for an additional field. This also applies to the A&R System of DCS where the information will be captured.

7. CONCLUSION

The major role players believe that the approach that has been recommended will be the best from a practical as well as from an impact point of view and that the target of 12 – 18 months is achievable. The amendments that are required to the J7 and to the A&R System are acceptable and the recommendations have been reflected in a memorandum of understanding between the different stakeholders.