

# National Prosecuting Authority



## **Criminal Law (Forensic Procedures) Amendment Bill**

**B 2 - 2009**

NPA Presentation to Ad Hoc Committee

2 February 2009

# Objectives of presentation



- To indicate the NPA's general viewpoint toward the Bill
- To indicate the amendments we suggest to the Bill

# The NPA's View



- Welcomes the proposed legislative amendments
- Enhances ability to deal with crime
- Extends access to existing fingerprint databases
- **Extends the usefulness of DNA analysis**
- Will assist in excluding suspects and identifying perpetrators

# DNA Profiles



- Must there be a logical connection between the crime and the taking of a sample?
- Must the taking of samples be restricted to serious offences?
- Does the retention of the DNA or samples create a suspicion in respect of persons arrested?

- Are persons arrested and not charged or who are acquitted treated differently from other members of the public?
- Is the difference justifiable?
- How great is the difference?

# Suggested amendments



- **Clause 2: Insertion of proposed section 36A in Chapter 3 of Act 51 of 1977**
  - (b) “body-prints” means prints taken from a person’s ear, foot, nose, palm, toes;
  - (h) “NDDSA” means the National DNA Database of South Africa, established in terms of section 15G of the South African Police Service Act;
  - (k) “speculative search” means that the body-prints, fingerprints, photographic images, intimate samples or non-intimate samples or the information derived from such samples taken, under any power conferred by this Chapter, ...

# Suggested amendments



- **Clause 3: Insertion of proposed section 36B(1)(a)(iv) in Chapter 3 of Act 51 of 1977**
    - (1) A police official must –
      - (a) take the finger-prints or must cause such prints to be taken of any –
        - (iv) person convicted by a court and sentenced to -
          - (aa) a term of imprisonment, whether suspended or not; or
          - (bb) any non-custodial sentence,
- if a non-intimate sample was not taken upon arrest;

# Suggested amendments



## **Clause 3: Insertion of proposed section 36(3) and 36(4) in Chapter 3 of Act 51 of 1977**

(3) Nothing in this Chapter, shall prohibit a police official from re-taking the finger-prints of any person referred to in subsection (1), if –

(a) the finger-prints taken on the previous occasion do not constitute a complete set of his or her finger-prints; or

(b) some or all of the finger-prints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(4) Nothing in this Chapter, shall prohibit a police official from re-taking a non-intimate sample from any person referred to in subsection (1), if the non-intimate sample taken from him or her was either not suitable for DNA analysis or, though so suitable, the sample proved insufficient.



# Suggested amendments



- **Clause 3: Insertion of proposed section 36B(6)(a) in Chapter 3 of Act 51 of 1977**
  - (6) (a) Subject to paragraph (b), the finger-prints, non-intimate samples or the information derived from such samples, taken under any power conferred by this section, **must** be retained after it has fulfilled the purposes for which it was taken or analysed, but shall only be used for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

# Suggested amendments



- **Clause 3: Insertion of proposed section 36B(7) in Chapter 3 of Act 51 of 1977**
  - (7) Paragraphs (a)(iv) and (b)(iv) of subsection (1), apply to any person convicted of any **crime**, irrespective of sentence, including –
    - (a) any person serving such a sentence at the time of the commencement of this section; and
    - (b) where applicable, any person released on parole in respect of such a sentence;irrespective of the fact that such a person was convicted of the offence in question, prior to the commencement of this section.”.

# Suggested amendments



- **Clause 4: Insertion of proposed section 36C(3)(d) in Chapter 3 of Act 51 of 1977**
  - (d) The non-intimate samples or the information derived from such samples, as referred to in paragraph (a), which shall include, but not be limited to the DNA profiles derived from such samples, must be stored on the NDDSA in accordance with the provisions of Chapter 6B of the South African Police Service Act, 1995 (Act No. 68 of 1995).

# Suggested amendments



- **Clause 5: Amendment of section 37(1)(a) of Act 51 of 1977**
  - (1) Any police official may-
  - (a) take the [**finger-prints**, palm-prints or foot-prints] body-prints or may cause any such prints to be taken-

# Suggested amendments



- **Clause 5: Amendment of section 37(1)(a) of Act 51 of 1977**
  - (c) take such steps as he or she may deem necessary in order to ascertain whether the body of any person referred to in paragraph (a)(i) or (ii) or paragraph (a)(i) or (ii) of section 36B(1) has any mark, characteristic or distinguishing feature or shows any condition or appearance; Provided that no police official shall take any **[blood]** intimate sample of the person concerned nor shall a police official make any examination of the body of the person concerned **where that person is a female and the police official concerned is not a female.**