

No. S 4

*CRIMINAL PROCEDURE
CODE (Amendment) Order, 2007
Body samples*

**CONSTITUTION OF BRUNEI DARUSSA
(Order under Article 83(3))**

CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER, 2007

ARRANGEMENT OF SECTIONS

Section

1. Citation.
 2. Amendment of section 2 of Chapter 7.
 3. Insertion of new sections 112A, 112B and 112C.
 4. Insertion of new Forms XXIV(A) and XXIV(B).
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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER, 2007

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

Citation.

1. This Order may be cited as the Criminal Procedure Code (Amendment) Order, 2007.

Amendment of section 2 of Chapter 7.

2. Section 2 of the Criminal Procedure Code, in this Order referred to as the Code, is amended by deleting the definition of "police officer" and by substituting the following new definition therefor –

"police officer" means any member of the Royal Brunei Police Force, and includes a special police officer when mobilized or deemed to be mobilized for active service and any person invested under any written law with the powers of a police officer;".

Insertion of new sections 112A, 112B and 112C.

3. The Code is amended by inserting the following 3 new sections immediately after section 112 –

"Body samples.

112A. (1) A police officer making an investigation under this Chapter may cause a body sample (as defined in section 112C) of a person to be obtained for forensic analysis if he has reasonable cause to believe that the body sample may confirm or disprove whether that person was involved in an offence punishable with imprisonment.

(2) If appropriate consent (as defined in section 112C) for a body sample as defined in section 112C to be taken is refused without good cause or cannot be obtained despite all reasonable efforts, that person may be taken before a magistrate who may, if satisfied that there is reasonable cause to believe that the body sample may confirm or disprove whether that person was involved in an offence punishable with imprisonment, order that that person provide the body sample required.

(3) Where it is shown that such appropriate consent from a person was refused without good cause, the court, in determining —

(a) whether there is a case to answer against him; or

(b) whether he is guilty of the offence with which he has been charged,

may draw such inference from that refusal as it thinks proper and, based on such inference, may treat that refusal as corroboration or as amounting to corroboration of any relevant evidence against him.

Persons permitted to take body samples.

112B. (1) A body sample may only be taken by —

(a) a person registered under the Medical Practitioners and Dentists Act (Chapter 112);

(b) a police officer who has received training for that purpose;
or

(c) any other suitably qualified or trained person who is authorised by the Commissioner of Police for that purpose.

(2) Before taking a body sample, the person permitted under subsection (1) to take it must satisfy himself that such taking will not endanger the person from whom it is to be taken.

(3) The fact that a body sample has been taken under this section shall be recorded by the person taking it in such form or manner as may be required by the Commissioner of Police.

(4) A person from whom a body sample is lawfully required under section 112A who refuses, without reasonable excuse, to give a body sample or to allow it to be taken from him, or who otherwise hinders or obstructs the taking of a body sample is guilty of an offence under section 186 of the Penal Code (Chapter 22) and the person permitted under subsection (1) to take the body sample may, with such assistance as is required, use such force as is reasonably necessary for the purpose of taking the sample.

Interpretation, re sections 112A and 112B.

112C. In sections 112A and 112B —

"appropriate consent" means —

- (a) in relation to a person who has attained the age of 18 years, his consent in writing;
- (b) in relation to a person who has attained the age of 14 years but has not attained the age of 18 years, the consent in writing of both that person and of his parent or guardian;
- (c) in relation to a person who has not attained the age of 14 years, the consent in writing of his parent or guardian,

given to the police officer in charge of the case after the person concerned or his parent or guardian, as the case may be, has been informed by the police officer of the purpose for which a body sample is required and the manner by which it is to be taken;

"body sample" means —

- (a) a sample of head hair, including the roots thereof;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part, other than a private part, of a person's body but not any other body orifice;
- (d) a swab taken from a person's mouth;
- (e) saliva;
- (f) an impression of any part of a person's body other than an impression of a private part or an impression of the face;
- (g) an intimate sample, being a body sample that is obtained by means of any invasive procedure.

"intimate sample" means —

- (a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;
- (b) a dental impression; or
- (c) a swab taken from a private part of a person's body or from a person's body orifice other than the mouth;

"private part" in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman."

Insertion of new Forms XXIV(A) and XXIV(B).

4. The Code is amended by inserting the following new forms immediately after Form XXIV in the Second Schedule —

"XXIV(A) - Application for approval for the taking of body sample
(section 112A(2))

TO A MAGISTRATE IN THE MAGISTRATES COURT AT

I, (name and post of the applicant),
apply for an order of a Magistrate to the taking of a body sample,
namely, from
(name of the suspect) on the following grounds —

- (i) the said person is suspected of having committed an offence punishable with imprisonment contrary to section of the; and
- (ii) it is believed that the sample may confirm or disprove the commission of the offence by the said person.

Dated this day of .

.....
Applicant
(name, post and signature)

XXIV(B) - Approval for taking of body sample
(section 112A(2))

To:

An application has been made to the undersigned, a Magistrate, by (name of the applicant) on (date) and the undersigned Magistrate, is satisfied that there are reasonable grounds —

- (i) for suspecting that the said person has committed an offence punishable with imprisonment contrary to section of the; and
- (ii) for believing that the sample will may confirm or disprove the commission of the offence by the said person.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

I hereby order that the suspect provide the body sample required, namely
..... (description of sample)
to

Dated this day of .

.....
Magistrate.".

Made this 13th. day of Muharam, 1428 Hijriah corresponding to the
1st. day of February, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan,
Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM