Crimes (Forensic Procedures) Amendment Bill 2007

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CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2007

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Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [8.04 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Crimes (Forensic Procedures) Amendment Bill 2007.

The bill amends the Crimes (Forensic Procedures) Act 2000. The amendments implement a 2007 Government Election Commitment to expand the range of offences in respect to which DNA samples may be taken without a person's consent.

Currently, police can only take DNA samples from people accused of indictable offences like murder, sexual assault and robbery unless they consent to the forensic procedure. The changes will expand this to include all offences, including non-indictable offences such as loitering by convicted child sex offenders and minor drug offences.

The amendments also clarify the legal test that must be met before a police officer can take a DNA sample from a suspect without his or her consent. This test has two important limbs.

First, the police officer must reasonably suspect that the person committed an offence.

Second, there must be reasonable grounds to believe that the DNA sample might produce evidence tending to confirm or disprove that the suspect committed that particular offence.

Police will not be taking DNA samples from suspects just for the sake of it. Police will not be able to compel a person to provide a DNA sample if there is no information indicating that there is DNA material taken from, or available at, the crime scene—against which the intended suspect sample can be compared.

There are already other safeguards in the Crimes (Forensic Procedures) Act. Part 10 of the Act requires that a suspect's forensic material be destroyed if the suspect is acquitted of the offence or no criminal proceedings are commenced within a 12-month period. Exceptions to this rule include instances where a magistrate has approved the extension of this period or the person is the subject of an arrest warrant.

The bill makes a related amendment to ensure that the destruction provisions apply in the same way to a sample taken for one offence, where proceedings are taken in relation to another offence arising out of the same act or omission by the suspect. This will ensure that the forensic material is available for those criminal proceedings.

The bill implements important election commitments regarding DNA sampling, and provides clarity as to the tests that must be met before a person's DNA sample can be taken without their consent.

I commend the bill to the House.

The Hon. JOHN AJAKA [8.04 p.m.]: The Crimes (Forensic Procedures) Amendment Bill 2007 seeks to amend the Crimes (Forensic Procedures) Act 2000 to allow a senior police officer or magistrate to request or order a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab in relation to the investigation of any offence, rather than only indictable offences and other prescribed offences, and to clarify that a forensic procedure may be ordered in relation to a suspect for the purpose of obtaining evidence tending to confirm or disprove that the suspect has committed an offence only if there are reasonable grounds to believe that the suspect has

> committed that offence. The Opposition does not oppose the bill. The landscape of crime prevention, detection and investigation is constantly evolving. The Opposition is committed to optimising access by police and the courts to new technologies at the forefront of crime fighting insofar as that access does not infringe the civil rights and liberties of those subjected to these new technologies and procedures.

The bill will expand the range of offences for which DNA samples may be taken without a person's consent. Currently, police can take DNA samples only from people accused of indictable offences. The amendments will expand this to include all offences. The proposed changes to section 88 (2) (c) of the Act ensure that the forensic material taken in relation to one offence will be available in proceedings in relation to another offence arising out of the same act or omission by the subject. I note that the original bill in 2000 was strongly opposed by the Aboriginal Legal Service, the Bar Association, the New South Wales Privacy Commission, the Ethnic Communities Council, the Law Society, Civil Rehabilitation Committee Justice Support, the Council for Civil Liberties, the Positive Justice Centre and Justice Action. These parties remain opposed to such legislation.

It has been argued, firstly, that the proposed amendments represent an unnecessary expansion of already inherently intrusive powers to request non-intimate forensic procedures and, secondly, that the bill challenges the principle that people have the right to remain silent to ensure that they are not compelled to say anything that may impugn them of a crime. The compulsion of forensic evidence could be equated to a breach of this right. Indeed, in not opposing this bill we must be assured that it will, in fact, achieve its objectives: to assist the officers of the law in proving or disproving guilt as pertains to an offence with a consideration of the probative value of evidence obtained through non-intimate forensic procedures; and to create greater certainty in the prosecution of criminals.

Another concern that has been raised is that currently under the principal Act the intrusiveness of authorised forensic procedures is proportional to the severity of the suspected offence. However, under the proposed changes even those reasonably suspected of having committed a relatively less serious offence can be subjected to requests or orders for non-intimate forensic procedures. The proposed amendments may therefore be perceived to destroy the balance between individual rights and the exigencies of effective law enforcement. The Legislation Review Committee expressed concern that the extension of powers proposed by the bill may "trespass on a suspect's right to personal physical integrity". However, it concluded that:

> given the various safeguards included and the public interest in obtaining relevant evidence where there are reasonable grounds to believe that the suspect has committed an offence ... the bill does not unduly trespass on personal rights and liberties.

The safeguards imposed on the use of the extended powers include:

A senior police officer may not order the carrying out of a non-intimate forensic procedure unless satisfied:

(a) that the suspect is under arrest, and

(b) that there are reasonable grounds to believe that the suspect has committed an offence, and

(c) that there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence; and

(d) that the suspect is neither a child nor an incapable person, and

(e) that the carrying out of such a procedure is justified in the circumstances.

Secondly, in the case of a non-intimate forensic procedure:

> (a) there must be reasonable grounds to believe that the suspect has committed an offence, and

(b) there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence.

I also note that these provisions will add to the safeguards already in the Act, such as part 10, which requires that a suspect's forensic material be destroyed if the suspect is acquitted of the offence or no criminal proceedings are commenced within a 12-month period. Having examined the scope of the extended powers, the safeguards imposed on these powers and the position of key stakeholders, the Opposition emphasises the need for adequate review mechanisms, particularly in relation to the existence of "reasonable grounds" for the exercise of the powers, as well as avenues for redress in the instance that an individual wishes to appeal an order requiring them to undergo a non-intimate forensic procedure—for example, pursuant to the Crimes (Local Courts Appeal and Review) Act 2002. For the reasons outlined previously, the Opposition does not oppose the bill.

The Hon. MARIE FICARRA [8.11 p.m.]: The Coalition does not oppose the Crimes (Forensic Procedures) Act 2007. This bill will allow a police officer or magistrate to request or order a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered

buccal swab in connection with the investigation of any offence where there are reasonable grounds to believe that a suspect has committed an offence. The bill will ensure that forensic material taken in relation to one offence will be available in cases where proceedings are taken in relation to another offence.

Buccal swabbing is an effective, quick and painless DNA sample collection technique that involves rubbing a swab similar to a Q-tip against the inside of the cheek. The rubbing motion collects loose cheek cells, and these cells contain enough DNA for use in investigative follow-up and other applications such as paternity tests. DNA is the same in every cell of the body. A cheek cell collected through buccal swabbing contains the same DNA as a blood cell collected through a blood draw. Buccal swab samples have many primary benefits: they are easy to administer—painless and non-invasive, and can even be safely performed on a newborn infant; and they are more reliable than blood samples for patients who have recently had blood transfusions or bone marrow transplants and whose blood may show the presence of the donor's DNA.

DNA is used for forensic identification in many instances: to identify potential suspects whose DNA may match evidence left at crime scenes; to exonerate persons wrongly accused of crimes; to identify crime and catastrophe victims; to establish paternity and other family relationships; to identify endangered and protected species as an aid to wildlife officials—and it has been used to successfully prosecute poachers; to detect bacteria and other organisms that may pollute air, water, soil and food; to match organ donors with recipients in transplant programs; to determine pedigree for seed or livestock breeds; and to authenticate consumables such as caviar and wine.

DNA testing has been used for many years and is extremely reliable. Throughout the past few years forensic identity testing has been considerably transformed by the development of multiplex polymerase chain reaction [PCR] systems involving DNA amplification. These systems are ideally suited for both high throughput forensic identification and the formation of large national DNA databases for criminal intelligence purposes. Any type of organism can be identified by examination of DNA sequences unique to that species. To identify individuals, forensic scientists scan 13 DNA regions that vary from person to person and use the data to create a DNA profile of that individual—often called a DNA fingerprint. There is an extremely small chance that another person has the same DNA profile for a particular set of regions: only one-tenth of a single per cent of DNA—about three million bases—differs from one person to the next. Scientists can use these variable regions to generate a DNA profile of an individual, using samples from blood, bone, hair and other body tissues and products.

The extensive use of biological evidence to identify victims and offenders has been significant in recent years in relation to the courts of law enforcement investigations, criminal court proceedings and victim service provider issues. Arguably, DNA evidence has become the most well known type of forensic evidence, probably because it can be uniquely identifying and because it is the genetic blueprint of the human body. For these reasons, DNA evidence has become a highly influential piece of the crime puzzle. The combined DNA index system—CODIS—blends computer and DNA technologies into a powerful tool for fighting crime.

Although DNA cannot determine a motive for a crime, it can be an important part of any law enforcement investigation, particularly one in search of an all-important lead. Forensic scientists also use DNA evidence to identify human remains, determine paternity and study human populations and medical diseases. Technological advances that have made it more reliable and efficient have increased the popularity of DNA evidence use. For example, the time needed to determine a sample's DNA profile has dropped from between six and eight weeks to between one and two days. Future advancements on the near horizon will decrease this time to as little as a few hours or even a few minutes.

Property crime offenders have higher recidivism ratestheir crime and violence can escalate, and property crime cases often go unsolved. Biological evidence collected from property crime scenes can prevent future property crimes and more serious offences. There has also been an increased acceptance and use of DNA information in the courtroom. DNA evidence can help convict the guilty, acquit the innocent or exonerate those wrongly accused or convicted. This does not necessarily mean that DNA evidence alone can determine a verdict. DNA evidence is used often to corroborate eyewitness testimony or other evidence.

In Great Britain more crimes are being solved using a national database of DNA sequences of criminals and suspected criminals. Launched on 10 April 1995, this national database holds DNA profiles from more than three million people. In a typical month the database churns out hits for 15 murders, 45 rapes and sexual offences, and 2,500 car, theft and drug crimes. With DNA evidence, the average crime clear-up rate has increased from 24 per cent to 43 per cent and is growing steadily as more DNA profiles are added daily.

That is a dramatic increase in clearance rates. With a population of 60 million people in Great Britain, the three million DNA database entries make up about 5 per cent of the population. Future database growth will no doubt make it an even more effective tool for catching criminals. It would be great to see that happen not only in New South Wales but also in Australia as a whole. DNA samples from suspects from previous investigations are proving fertile ground for discovering perpetrators of other crimes. Since it began in 2001, the practice of retaining profiles of suspects subsequently acquitted has added 135,000 extra profiles to the database.

Of those, more than 7,000 have since been connected with crimes, including 68 murders, 38 attempted murders

and 116 rapes. The trend towards keeping biological samples—not only the DNA profiles produced from those samples—is driven by expectations of future advances in DNA testing techniques. As DNA testing becomes more powerful, the original samples from the crime scenes that do not match samples of known individuals on the database will be reanalysed to derive more information about race, ethnicity, eye colour, skin colour, hair colour, height, and facial and other features. Existing DNA analysis techniques can already provide a great deal of racial and ethnic information. As large numbers of DNA locations are deciphered more characteristics will be deduced from the DNA sequences.

In November 2004 California passed Proposition 69 to enable the collection of samples for a DNA database not only from felons but also in 2009 from anyone arrested for a felony crime. The proposition received a 62 per cent yes vote. In California even those arrested for misdemeanours qualify for DNA sample collection if they have a previous felony conviction. California's DNA database will become much more effective as a gradually increasing percentage of all criminals in that State are placed on it. We should not be surprised to see some countries collecting DNA samples from foreign visitors for crime investigations and to combat terrorism.

Local councils now use DNA testing to assist in the conviction of irresponsible dog owners whose pets attack other animals or humans. Rangers employed by the City of Port Phillip in Victoria are trialling a dog attack evidence kit. Council officers say that nearly half of the dogs involved in attacks have been involved in previous attacks and that DNA testing will help to identify them sooner. Police now have well-documented methods for taking samples and transporting them, but unfortunately local government does not. However, this kit—which is increasingly popular with local governments around Australia—will provide all the necessary documentation and utensils to take a sample and transport it to a laboratory so that evidentiary requirements can be upheld in a criminal prosecution, if it gets to that point. In time I believe it will act as a deterrent in local government circles, particularly for irresponsible dog owners. City hospitals treat dog attack victims every day, and that is a serious concern. As many as 100,000 dog attacks are reported every year in Australia and most of them are never solved. It will be interesting to see how far the canine DNA material investigations go in clearing up those offences.

DNA testing can be undertaken in many interesting situations. I will not detail all of them, but I have two fascinating cases to relate to the House. In 2000 scientists cracked one of the greatest mysteries in European history using DNA tests to prove that the son of the executor French King Louis XIV and Marie Antoinette died in prison as a child. Royalists have argued for many years about whether Louis-Charles of France perished in 1795 in a grim Paris prison or managed to escape the clutches of the French Revolution. In December 1999 the presumed heart of the child king was removed from its resting place to enable scientists to compare the DNA make-up with samples from living and dead members of the royal family, including a lock of his mother's hair. It was established that the heart did belong to the child king. The other case involved Snowball the cat. A woman was murdered on Prince Edward Island in Canada and her estranged husband was implicated because a snowy white cat hair was found in a jacket near the scene of the crime. The DNA in the hair matched DNA of Snowball, who belonged to the husband's parents. Many of these instances will crop up.

In general, people will support this legislation. The civil libertarians will say that liberties will be lost and that they do not like having to swab their cheeks. However, this technology is necessary and it will reduce the incidence of crime. The extraordinary usefulness of DNA testing is clear. The Coalition fully supports this bill, which will give police officers and magistrates the ability to order a suspect to be forensically tested in a non-invasive manner. As we have seen from recent overseas experience, as we develop our DNA databases such genetic information banks will be a powerful tool in assisting the police in solving crimes and addressing the perpetual challenge of keeping our community safe.

Ms LEE RHIANNON [8.26 p.m.]: The Greens do not support the Crimes (Forensic Procedures) Amendment Bill. It will massively expand the range of offences in relation to which DNA samples may be taken without a person's consent. The Greens recognise that DNA evidence can exonerate the innocent, identify the guilty and solve what would once have been elusive, unsolvable crimes. DNA evidence can provide certainty where once there was none. However, it is far from infallible; it is subject to human error. Given that DNA sampling is a massive encroachment on privacy and personal integrity, the Greens are very concerned about expanding its use beyond all but the most serious of crimes.

Section 11 of the Crimes (Forensic Procedures) Act provides that a police officer may ask a suspect to undergo a so-called non-intimate DNA procedure only in relation to prescribed offences—that is, generally indictable and more serious offences. If passed, this bill will amend section 11 to allow a police officer to ask a suspect to undergo a DNA procedure for any crime, including summary offences. More disturbingly, this bill will amend sections 20 and 24 of the Act to allow a senior police officer or magistrate to order that a DNA sample be taken without the consent of the suspect in respect of any offence. That is a significant expansion of powers. A suspect does not have to be charged to have a DNA sample taken, only arrested. Police already have the power to take DNA samples for a huge variety of crimes. The Greens believe this bill is unnecessary. The Legislation Review Committee advises that this aspect of the bill trespasses on a suspect's right to personal physical integrity.

I acknowledge that a number of so-called safeguards are provided. Specifically, a senior police officer must be

satisfied that the suspect is under arrest, that there are reasonable grounds to believe that the suspect has committed an offence and that the procedure might produce evidence tending to confirm or disprove innocence. The officer must also be satisfied that the suspect is neither a child nor an incapable person and that the carrying out of such procedure is justified in the circumstances. The Greens are concerned that these safeguards contain loopholes large enough to drive a bus through. A number of them disappear in the case of orders issued by a magistrate. A magistrate need only satisfy the test that there are reasonable grounds to believe that the suspect has committed an offence and that the procedure might produce evidence tending to confirm or disprove innocence.

From my reading of the bill, it appears that a magistrate can order DNA samples to be taken from a minor or an incapable person. I would like the Minister to confirm whether that is the case and inform the House of what, if any, additional safeguards are in place for these vulnerable people. It is important that this is spelt out and that it is on the record. Similarly, I would like the Minister to explain whether this bill will allow police officers to take DNA samples covertly without a suspect's knowledge or permission. I understand that this bill allows DNA samples to be taken without consent, but I am unclear whether that includes DNA samples taken without the knowledge of the suspect. Again, I would like the Minister to clarify this matter in reply.

I am sometimes concerned that members of this House appear to lose their reason when it comes to having debates about DNA. DNA is not a magic bullet. It is not a cure-all. We are not police officers on the set of *Minority Report* or *CSI*. DNA is no more remarkable than fingerprinting and should not be used as an excuse to infringe on privacy and civil rights. DNA can play an important role in investigating crimes, but this forensic procedure must be carefully balanced against civil liberties. In the short time that DNA testing has been around, many of the concerns raised by the Greens have surfaced. The use of this procedure has been abused in many cases.

DNA testing carries with it a serious potential for miscarriages of justice. In a recent article in the journal *Current Issues in Criminal Justice*, Sydney University legal academic Kirsten Edwards looked at the dangers of DNA databases. Ms Edwards notes the danger, firstly, of overstating the statistical significance of a DNA match. There is a wide belief that DNA evidence is more accurate than it really is—that it establishes guilt or innocence rather than being just one factor. Secondly, Ms Edwards notes that there may be many different innocent explanations for the presence of DNA at a crime scene. Thirdly, a multitude of possible errors can arise during laboratory analysis and data entry. Contamination can occur by failing to wipe down benches, not using clean gloves or even sneezing.

Coincidental matches do occur. In the United Kingdom a man with advanced Parkinson's disease was arrested and charged with a break and enter offence which occurred in a second floor unit more than 300 kilometres from his home. The man could not drive or even dress himself without assistance, yet his DNA coincidentally matched the crime scene. He was detained for seven hours. That case should be a reminder to members who have the idea that DNA testing always turns up something accurate because everybody's DNA is different—which it is. But members need to recognise that that does not mean the DNA testing that produces an apparent exact piece of evidence is correct. Finally, Ms Edwards notes the great potential for corruption and fabrication. DNA evidence is ideally suited to planting. It is easy to obtain without the person knowing and can be easily concealed and transported. Ms Edward concludes that the cumulative effect of these weaknesses "leaves the innocent with much to fear and suggests the very real possibility that an innocent person could already have been the victim of a DNA cold hit".

These weaknesses challenge the fundamental assumptions that underlie the political enthusiasm for the use of DNA database evidence—specifically that the innocent have nothing to fear from DNA databases and that DNA evidence is reliable and ironclad evidence of guilt. By forcing DNA tests upon suspects we are taking a step closer to reversing the presumption of innocence. Let us face it, when a person's DNA is matched to a crime scene the burden of proof effectively shifts—not in a formal legal sense but practically the suspect must provide an innocent explanation for the presence of the DNA, which so many people assume is automatically that person's. Again, I urge members to remember that these tests are not always accurate

The Greens are particularly concerned about the usefulness of expanding DNA sampling to non-indictable offences. We are concerned that wrongful convictions may be even more likely because convicted people may not launch a long and involved challenge during a sentence of only a few years. A challenge usually involves seeking out expensive expert testimony. Given that funding for legal aid and community legal services has been gutted, challenging DNA evidence will be out of reach of many people convicted of less serious offences. Indeed, I question whether the police themselves have the necessary resources to use DNA testing for less serious matters. DNA testing and investigation for less serious matters would require a huge funding boost for police, forensic laboratories and computer systems. Either this funding will not be provided or it will be provided at the expense of funding for the community legal sector, further tilting the system in favour of the prosecution—something I believe should trouble all of us.

This Labor Government—with the Coalition barracking from the sidelines—continues to expand the scope of DNA testing in New South Wales. Perhaps this is because DNA sampling is seen as less invasive than urine samples or blood tests. The United States academic GT Marx in a recent article called "Hey Buddy Can You Spare a

DNA?" refers to the rise of DNA as soft surveillance. He has stated:

> As with other new forms of surveillance and detection, the process of gathering the DNA information is quick and painless involving a mouth swab and is generally not felt to be invasive. This makes such requests seem harmless relative to the experience of having blood drawn, having an observer watch while a urine drug sample is produced, or being patted down or undergoing a more probing physical search.

Intimate, intrusive or otherwise, DNA sampling has serious implications for privacy—for a person's right to physical integrity. Is the communal interest in solving crimes such as loitering and possession of marijuana proportionate to the violation of a person's right to privacy and bodily integrity? The Greens remain concerned that so much of his extensive testing that will be the result if this bill is passed will become a giant DNA database, which can then be misused. So the Greens do not support this bill. Members of the House would do well to remember the words of Benjamin Franklin, "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty or safety." They are not words that I say lightly, but this is a most serious bill and it is of great concern that both major parties are lock, stock and barrel behind it.

Reverend the Hon. FRED NILE [8.36 p.m.]: The Christian Democratic Party supports the Crimes (Forensic Procedures) Amendment Bill 2007. We congratulate the Government on bringing forward this bill tonight. It includes matters that were announced by the Premier prior to the election, so it is the fulfilment of an election promise. The bill will amend the Crimes (Forensic Procedures) Act 2000 to extend the circumstances in which a person suspected of a crime may be requested or required to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or carrying out of a self-administered buccal swab, and to make it clear that a forensic procedure may be ordered in relation to the suspect for the purpose of obtaining evidence tending to confirm or disprove that the suspect has committed an offence only if there are reasonable grounds to believe the suspect has committed that offence.

The range of offences that now give rise to DNA testing and for which DNA samples can be taken without a person's consent will be expanded. Previously police could take DNA samples only from people accused of indictable offences, such as murder, sexual assault and robbery, unless they consented to the forensic procedure. This change, through this legislation, will expand the scope to include all offences, including non-indictable offences such as loitering by a convicted child sex offender, and minor drug offences. The bill will also make it clear that there are legal tests the police have to take into account. Firstly, the police officer must reasonably suspect that the person committed an offence and, secondly, there must be reasonable grounds to believe that the DNA sample might produce evidence tending to confirm or disprove that the suspect committed that offence. Obviously, police will not take DNA samples from suspects just for the sake of it. Also, police will not be able to compel a person to provide a DNA sample if there is no information indicating that DNA material is taken from or available at the crime scene against which the intended suspect samples can be compared.

The legislation also contains a requirement that a suspect's forensic material must be destroyed if he or she is acquitted of an offence or no criminal proceedings are commenced within a 12-month period. However, there are some exceptions. The Government should give consideration—I know that this would be condemned by the Greens—to maintaining a permanent DNA database, as is occurring in some other countries, to identify bodies and solve crimes. In recent murders the victims' bodies were deliberately cut up and their hands and heads were removed in an attempt to prevent police identifying them. A permanent DNA databank could be checked to identify murder victims.

Identification of drivers and passengers who suffer severe injuries is often difficult. A tragic car accident occurred near Gerringong where I live. The car exploded, the lady in the car was incinerated and it was almost impossible to identify her. A DNA databank would assist such identification. I do not believe that a DNA databank would be an attack on our human rights, and I do not have any objection to a fingerprint database. Because of terrorism threats more and more countries are using these measures and certainly fingerprints are being scanned more widely. I understand that China and other countries have introduced a fingerprint check at airports. I believe that the use of DNA and fingerprint databases should be expanded. The Christian Democratic Party is pleased to support the bill.

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [8.42 p.m.], in reply: Ms Lee Rhiannon made a number of comments in her contribution opposing the Crimes (Forensic Procedures) Amendment Bill 2007. One of her comments was that the legislation would enable the building of a database through covertly obtained DNA samples. This bill covers the collection of DNA from the person directly—from hair or buccal samples. In this respect "without consent" does not mean obtaining the DNA covertly, but taking a sample from a person without his or her consent; in other words, the sample is a hair sample or it is taken from a buccal swab.

For DNA samples to be entered into the database, they have to be taken in accordance with the legislation, and the tests must be satisfied. Covertly collected samples would not meet these tests and so would not be matched onto the database. In that respect I should make the point that in order to be able to meet these tests there are two important limbs. Firstly, the police officer has to reasonably suspect that the person committed an offence and, secondly, there must be reasonable grounds to believe that the DNA sample might produce evidence

tending to confirm or disprove that the suspect committed that particular offence. A suspect cannot be compelled to provide a DNA sample unless the police are satisfied that the DNA sample will be useful in the investigation of the offence. So those are the relevant protections that govern the obtaining of samples in the way that I have described.

The member also indicated—and she used appalling words—that the legislation extended to children and incapable people. The bill provides a protection for those persons by requiring that, if a person is a child or an incapable person, an order of a magistrate would be required in order to be able to take a sample. The Government believes that oversight by the court provides a balance between the protection of certain vulnerable categories of people and the undeniable fact that both children and incapable people sometimes commit extremely serious crimes. For those reasons I commend the bill to the House.

Question—That the bill be now read a second time—put.

The House divided.

Ayes, 25

Mr Ajaka Mr Clarke Mr Costa Ms Ficarra Miss Gardiner Mr Gay Ms Griffin Mr Harwin Mr Hatzistergos	Mr Khan Mr Lynn Mr Mason-Cox Reverend Dr Moyes Reverend Nile Ms Parker Mrs Pavey Mr Pearce Ms Robertson	Ms Sharpe Mr Tsang Mr Veitch Mr West Ms Westwood *Tellers,* Mr Colless Mr Donnelly

Noes, 4

	Ms Hale Ms Rhiannon *Tellers,* Mr Cohen Dr Kaye	

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

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