

Passed by both Houses



New South Wales

Summary Offences Amendment (Places of Detention) Bill 2002

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Summary Offences Act 1988 No 25	2
Schedule 1 Amendments	3

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Summary Offences Amendment (Places of Detention) Bill 2002

Act No , 2002

An Act to amend the *Summary Offences Act 1988* with respect to powers of correctional officers to stop, detain and search persons or vehicles at places of detention; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Summary Offences Amendment (Places of Detention) Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Summary Offences Act 1988 No 25

The *Summary Offences Act 1988* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 27A Definitions

Insert in alphabetical order:

adult means a person who is of or above the age of 18 years.

child means a person who is under the age of 18 years.

mentally incapacitated person means a person who is incapable of managing his or her affairs.

non-correctional member of staff means:

- (a) a person employed in the Department of Corrective Services, or
- (b) a person employed at a managed correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),

but does not include a correctional officer.

search observation staff member means a non-correctional member of staff (or member of a class of such persons) prescribed by the regulations for the purposes of this definition.

[2] Section 27B Trafficking

Omit section 27B (6).

[3] Section 27C Introduction or supply of syringes

Omit section 27C (4).

[4] Section 27D Unlawful possession of offensive weapons or instruments

Omit section 27D (2A).

[5] Section 27E Miscellaneous offences

Omit section 27E (3).

[6] Section 27F Time within which proceedings may be taken

Renumber section 27F as section 27O.

[7] Sections 27F–27N

Insert after section 27E:

27F Powers of correctional officers

(1) Power to stop, detain and search persons

A correctional officer may stop, detain and search a person, and anything in the possession of or under the control of a person, if:

- (a) the person is in or in the immediate vicinity of a place of detention, and
- (b) the correctional officer suspects on reasonable grounds that the person has in his or her possession or under his or her control anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part.

(2) Power to stop, detain and search vehicles

A correctional officer may stop, detain and search a vehicle that is in or in the immediate vicinity of a place of detention if the correctional officer suspects on reasonable grounds that:

- (a) the vehicle contains anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part, or
- (b) the vehicle has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part.

(3) Power to detain for purpose of search by police

A correctional officer who stops and detains a person or a vehicle under this section (whether or not the correctional officer searches the person or vehicle) may request a police officer to conduct a search or a further search of the person or vehicle, and may detain the person or vehicle while waiting for the arrival of a police officer at the place where the person or vehicle is being detained for the police officer to conduct the search.

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- (4) **Request to police to be made as soon as practicable**
A request to a police officer under subsection (3) must be made as soon as practicable after the correctional officer stops and detains the person or vehicle, or searches the person or vehicle.
- (5) **Power of correctional officer to seize things**
A correctional officer may seize all or part of a thing that the correctional officer suspects on reasonable grounds may provide evidence of the commission of an offence under this Part found as a result of a search under this section.
- (6) **Power to arrest**
In respect of any offence under this Part, the powers of arrest of a police officer may be exercised by a correctional officer.
- (7) **Arrested person to be taken to police or to authorised justice**
A correctional officer who arrests a person under this section must, as soon as practicable, take the person, and any property found on the person:
- (a) to a police officer, or
 - (b) before an authorised justice to be dealt with according to law.
- (8) Nothing in this section prevents the powers that may be exercised in relation to a person from being exercised in relation to a correctional officer.

27G Conduct of search

- (1) A correctional officer, in conducting a search under section 27F, may direct a person to do any or all of the following:
- (a) to submit to scanning by means of an electronic scanning device,
 - (b) to empty the pockets of the person's clothing,
 - (c) to remove any hat, gloves, coat, jacket or shoes worn by the person,
 - (d) to empty the contents of any bag or other thing, or to open any thing, that the person has with him or her, or has left in a vehicle,

- (e) in the case of a visitor to the place of detention—to make available for inspection and search any item stored in a storage facility allocated to the visitor,
 - (f) in the case of a correctional officer or a non-correctional member of staff—to make available for inspection and search any room or locker that is under the officer's or member of staff's control at the place of detention,
 - (g) in the case of an adult accompanying a child or a mentally incapacitated person—to assist the child or mentally incapacitated person to co-operate with a search.
- (2) A correctional officer, in conducting a search under section 27F, may direct a person to produce:
 - (a) anything that the correctional officer has detected or seen during the search on or with the person, or in a vehicle in which the person is or was present, and has reasonable grounds to suspect may provide evidence of the commission of an offence under this Part, or
 - (b) anything detected during the search by an electronic detection device, or
 - (c) anything indicated by a dog reacting positively to its presence.
- (3) In conducting a search of a person under section 27F, a correctional officer:
 - (a) must conduct the search with due regard to dignity and self-respect and in as seemly a manner as is consistent with the conduct of an effective search, and
 - (b) must not direct a person to remove any item of clothing being worn by the person, other than a hat, gloves, coat, jacket or shoes, and
 - (c) must not search a person by running the officer's hands over the person's clothing.
- (4) A search of a person conducted by a correctional officer under section 27F must, if practicable, be conducted by a correctional officer of the same sex as the person being searched or by a person of the same sex (being a non-correctional member of staff) under the direction of the correctional officer concerned.

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- (5) A search of a child or of a mentally incapacitated person must be conducted in the presence of:
 - (a) an adult who accompanied the child or the mentally incapacitated person to the place of detention (or its immediate vicinity), or
 - (b) if there is no such adult—a search observation member of staff.
 - (6) Regulations may be made for or with respect to the manner in which correctional officers are to conduct searches under section 27F.

27H Use of dogs

- (1) A correctional officer is authorised to use a dog to conduct any search under section 27F.
- (2) A correctional officer using a dog to conduct such a search is to take all reasonable precautions to prevent the dog touching a person.
- (3) A correctional officer is required to keep a dog under control when the officer is using the dog to conduct such a search.

27I Use of reasonable force

In exercising a function under this Part, a correctional officer may use such force as is reasonably necessary to exercise the function.

27J Safeguards

- (1) A correctional officer who detains a person in the exercise of a power under section 27F must not detain the person any longer than is reasonably necessary for the purpose, and in any event for no longer than 4 hours.
- (2) A correctional officer must, before exercising a power to detain, search or arrest a person under section 27F, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following:
 - (a) evidence that the correctional officer is a correctional officer (unless the correctional officer is in uniform),

- (b) the name of the correctional officer,
 - (c) the reason for the exercise of the power,
 - (d) a warning that failure or refusal to comply with a request or direction of the correctional officer, in the exercise of the power, is an offence.
- (3) Subsection (2) extends to a direction given by a correctional officer to a person in the exercise of a power to stop, detain and search a vehicle.
- (4) A correctional officer is not required to comply with subsection (2) if the correctional officer believes on reasonable grounds that:
- (a) the circumstances are of such urgency that complying with subsection (2) would render a search ineffective, or
 - (b) it is not reasonably possible to comply with subsection (2).

27K Failure to comply with search

A person must not, without reasonable excuse (proof of which lies on the person):

- (a) fail or refuse to comply with a request made, or a direction given, by a correctional officer under this Part, or
- (b) fail or refuse to produce anything detected or seen on or with the person, or in a vehicle in which the person was present at the time the thing was detected or seen, in a search when requested to do so by a correctional officer, or
- (c) resist or impede a search of a person or vehicle under this Part.

Maximum penalty: 10 penalty units.

27L Part does not derogate from other powers

- (1) Nothing in this Part limits any powers, authorities, duties or functions that correctional officers or police officers may have apart from this Part.

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- (2) In particular, the fact that a police officer or correctional officer conducts a search of a person under this Part does not prevent the police officer or correctional officer from exercising, whether during or after the search, any other powers of search or seizure that the police officer or correctional officer may have.
- (3) Nothing in this Part limits any power under the *Crimes (Administration of Sentences) Act 1999* or any other law for a person to conduct a search of an inmate, a correctional officer, a non-correctional member of staff or any other person, or a vehicle.

27M Admissibility of search evidence

Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part is not inadmissible merely because the thing is different in nature from a thing referred to in the reason given under section 27J (2) (c).

27N No personal liability for person conducting search under direction of correctional officer

A search conducted by a person under and in accordance with the direction of a correctional officer as referred to in section 27G (4) does not, if the search would be lawful if conducted by a correctional officer, subject the person making the search personally to any action, liability, claim or demand.