

TASMANIA

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YOUTH JUSTICE AMENDMENT (SEARCHES IN  
CUSTODY) BILL 2020

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*consultation draft*

# YOUTH JUSTICE AMENDMENT (SEARCHES IN CUSTODY) BILL 2020

*(Brought in by the Minister for Justice, the Honourable Elise Nicole Archer)*

## **A BILL FOR**

### **An Act to amend the *Youth Justice Act 1997***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Youth Justice Amendment (Searches in Custody) Act 2020*.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

#### **3. Principal Act**

In this Act, the *Youth Justice Act 1997*\* is referred to as the Principal Act.

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\*No. 81 of 1997

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**4. Sections 25A and 25B inserted**

After section 25 of the Principal Act, the following sections are inserted in Part 3:

**25A. Search of youths in, or in transit between, custodial facilities**

(1) In this section –

*authorised officer* means –

- (a) a police officer; and
- (b) a correctional officer; and
- (c) a detention centre manager; and
- (d) a person who carries out a search under subsection (3) that the detention centre manager causes under subsection (4) to be carried out;

*body cavity search*, in relation to a youth, means a search of the rectum or vagina of the youth;

*correctional officer* has the same meaning as in the *Corrections Act 1997*;

*custodial facility* means –

- (a) a watch-house; and

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(b) a detention centre; and

(c) a prison;

***transgender*** has the same meaning as in the *Anti-Discrimination Act 1998*;

***transsexual*** has the same meaning as in the *Anti-Discrimination Act 1998*.

(2) This section applies to a search, of a youth who is in custody, that is conducted by an authorised officer –

(a) under subsection (3) or a provision of an Act or an instrument of a legislative character made under an Act; and

(b) in a custodial facility or while the youth is in transit between custodial facilities –

but does not apply to a search under the *Terrorism (Preventative Detention) Act 2005*.

(3) An authorised officer may conduct –

(a) a search of a youth, who is in custody, that is conducted in a custodial facility; and

(b) a search of a youth, who is in custody, while the youth is in

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transit between custodial facilities.

- (4) A detention centre manager may cause a search under subsection (3) of a youth to be carried out.
- (5) A search of a youth to which this section applies may only be conducted if the authorised officer carrying out the search believes on reasonable grounds that the search is necessary for one or more of the following:
- (a) to obtain evidence relating to the commission of an offence or to prevent the loss or destruction of evidence in relation to the commission of an offence;
  - (b) to ensure security or good order of the custodial facility in which the search is being conducted or of a vehicle in which the youth is in transit;
  - (c) to ensure the safety of the youth or other persons;
  - (d) to remove into safe keeping any articles belonging to, or in possession of, the youth;
  - (e) to ascertain if there is concealed on the youth, in or beneath that youth's clothing, a weapon or other article capable of being

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used as a weapon, to inflict injury or to assist that youth to escape from custody;

(f) to ascertain if there is concealed, on or in the youth, drugs or any other things which the youth is prohibited by law from taking into, or having possession of, in the custodial facility in which the youth is situated or one of the custodial facilities between which the youth is in transit;

(g) the purposes, specified in the Act under which the search is carried out, for which the search may be carried out.

(6) An authorised officer conducting a search to which this section applies must ensure, as far as practicable, that the search –

(a) is the least intrusive kind of search that is necessary and reasonable to achieve the purposes of the search; and

(b) is conducted in the least intrusive way that is necessary and reasonable to achieve the purposes of the search; and

(c) is carried out in circumstances that accord reasonable privacy to the youth being searched.

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- (7) An authorised officer conducting a search, to which this section applies, of a youth must ensure, as far as is reasonable and practicable, that the officer only conducts the search, if –
- (a) the officer is the same gender as the youth, or
  - (b) where the youth presents as, or informs the officer that the youth is, transsexual, transgender or intersex – the officer is of the gender that the youth requests to conduct the search.
- (8) An authorised officer conducting a search to which this section applies may use the force that is reasonable and necessary in the circumstances to conduct the search.
- (9) In the event of an inconsistency between the application of this section, and the application of a provision of another Act, or instrument made under an Act, to a search to which this section applies, the provision of this section applies to the extent of the inconsistency.
- (10) Nothing in this section is to be taken to authorise the carrying out of a body cavity search of a youth by a person that is not specifically authorised under a provision of an Act or an instrument made under an Act.



**25B. Matters related to searches of youths under section 25A**

- (1) The regulations may prescribe requirements in relation to the establishment and maintenance of registers in which details of the conduct of some or all of the searches to which section 25A applies are to be recorded.
- (2) An authorised officer may seize an object found during a search under section 25A(3) –
  - (a) that may be evidence relating to the commission of an offence; or
  - (b) that may prejudice the safety of any person or the safety or good order of the facility; or
  - (c) to remove the object into safekeeping.
- (3) An object that is seized under subsection (2) –
  - (a) in a custodial facility that is a detention centre, or while in transit to a custodial facility that is a detention centre, must be dealt with in accordance with the regulations or instructions issued under section 124; or
  - (b) in a custodial facility that is a watch-house or prison is to be

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dealt with in accordance with the instructions of the person in charge of the custodial facility or in accordance with any regulations, orders or instructions, made or given under an Act, that apply in relation to the facility.

**5. Section 131 amended (Search of facility and possessions of detainee)**

Section 131 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *thing* in subsection (1):

***prohibited objects*** means weapons, metal articles, alcohol, articles capable of being used as weapons, drugs or any other things which the regulations prohibit from being taken into a detention centre;

- (b) by omitting paragraph (a) from subsection (2);
- (c) by omitting from subsection (2)(b) “and the examination of the detainee and of” and substituting “of, and the examination of,”;

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- (d) by omitting from subsection (2)(c)(i) “of a kind referred to in paragraph (a)(ii)” and substituting “a prohibited object”;
- (e) by omitting from subsection (3) “of a kind referred to in subsection (2)(a)(ii)” and substituting “a prohibited object”.

**6. Repeal of Act**

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

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