

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Youth Justice Amendment (Searches in Custody) Bill 2022

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Mr Speaker, I move that the Bill now be read a second time.

This Bill addresses concerns raised by the Commissioner for Children and Young People (the Commissioner) following media reports of two separate incidents involving personal searches of youths in the Hobart Reception Prison in early 2019. In response to these reports the Commissioner undertook a review of the relevant legislation, policies and procedures regarding personal searches of children and young people, and provided a Memorandum of Advice which was made public on the Commissioner's website.

The Commissioner provided her Memorandum of Advice to assist the development of reform to better promote and protect the wellbeing and best interests of children and young people in custodial facilities. The objective was to ensure relevant legislation, policies and procedures regarding searches are in line with well-established human rights standards and principles, and contemporary best practice.

The Commissioner's review made eight recommendations to the Tasmanian Government. While the Commissioner's review was, in part, in response to reports regarding the personal searching of youths within the Hobart Reception Prison, it considered searches of children and young people held in custody in custodial facilities generally. These are police watch-houses, prisons (including reception prisons) and detention centres. The review considered the continuum of search types of children in custody, from least intrusive to more intrusive, with a detailed review of the legislation and procedures governing searches of young people in custodial facilities.

Our Government thanks the Commissioner for raising these issues and I am pleased to inform the House that we have acted on these recommendations.

The Tasmanian Government is committed to minimising the need for intrusive searches in our custodial facilities, whilst balancing the need for searches for safety and security reasons. Searches prevent potentially harmful and prohibited items, such as drugs and weapons, from entering the custodial system, and reduce the risk of self-harm and harm to others, including staff.

Mr Speaker, I am pleased to advise the practice of routine personal searches has already ceased in all custodial facilities in Tasmania. The extent and nature of the searches being undertaken is determined by individual circumstances, and least intrusive principles.

However, this Bill drives a paradigm shift, expanding these principles in a consistent way across all custodial facilities for youth, ensuring a trauma-informed approach to keeping children and young people safe in our facilities. It builds safeguards around all search types, with extra safeguards for personal searches, defined in the Bill as 'unclothed searches'.

In delivering these legislative reforms our Government has also been responsive to the Commissioner's recommendation to invest in alternative security strategies such as body scanners that will minimise the reliance on more invasive search types.

In March 2021, as Attorney-General and Minister for Justice, I was pleased to announce the commitment of \$1.3 million to body-scanning technology in the Hobart and Launceston Reception Prisons, the Mary Hutchinson's Women's Prison and the Ashley Youth Detention Centre.

The new full-body scanners will be able to detect objects on or inside a person's body and clothing without the need to physically remove items of clothing or make any physical contact with the person being searched. Scanners are able to provide an instant internal image that can reveal contraband such as drugs, mobile phones and weapons. Body scanners are another tool to support the safety of staff and youth in custody, and importantly, reduce the conduct of more intrusive searches that involve touching the youth or removing their clothing.

I am appreciative of the involvement of many key stakeholders in making these changes. The Bill has been developed through an inter-agency working group, chaired by the Department of Justice and composed of senior executives from the Department of Justice, Communities Tasmania and the Department of Police, Fire and Emergency Management.

Through this collaborative effort, Agencies have responded to the Commissioner's advice and public and stakeholder feedback to deliver a Bill that is consistent with national standards and international conventions relating to the treatment of young offenders.

In drafting the Bill, I am particularly mindful that young people are among the most vulnerable members of our community. Our Government recognises that the way we engage with young offenders must reflect this vulnerability.

I also acknowledge that the current legal framework is complex, with powers to search a youth in custody in custodial facilities located in a number of Acts. Further, responsibility for different custodial facilities is defined in different Acts administered by the Minister for Children and Youth, the Minister for Police, Fire and Emergency Management, and myself as Minister for Corrections.

I would like to take this opportunity to thank my Ministerial colleagues for their support in delivering this Bill to the House.

We share a commitment to the protection of children and young people in each of our facilities, which has helped us develop the transformative changes in this Bill, for a consolidated and comprehensive search framework for youth in custody.

I will now outline and address key elements of the Bill:

Searches to which this Bill applies

The Bill responds to the issue of complexity in the searches framework highlighted by the Commissioner by defining the discretionary power to search a youth in custody in custodial facilities in the *Youth Justice Act 1997*. This means, where a youth is in custody in a custodial facility in Tasmania, the provisions detailed in this Bill will apply in relation to those searches.

Custodial facilities are a watch-house or detention centre, as currently defined in the *Youth Justice Act 1997* and a prison defined under the *Corrections Act 1997*. This includes the Risdon Prison Complex, Ron Barwick Prison, Mary Hutchinson Women's Prison as well as the Hobart and Launceston Reception Prisons, Ashley Youth Detention Centre and certain areas of police stations.

Importantly, this Bill does not authorise or apply to body cavity searches. This very rare search type will continue to be subject to existing stringent requirements in other Acts. Body cavity searches can only be authorised by a Magistrate, such as under the *Misuse of Drugs Act 2001*, *Poisons Act 1971*, or *Forensic Procedures Act 2000*. The limitations on these searches are defined in those Acts and this Bill does not alter those requirements.

Authority to Search and Authorisation

For prisons and detention centres, the Bill establishes the authority to search in the person responsible for the custodial facility, and the officers they authorise.

In respect of prisons, the authority is the Director of Corrective Services, correctional officers specified in the Director's Standing Orders, and a correctional officer ordered by the Director to conduct the search.

In respect of detention centres, the authority is the Secretary responsible for the Youth Justice Act, the detention centre manager established under the Act, persons specified in the Secretary's instructions, and a person ordered by the Secretary or detention centre manager to conduct the search.

A police officer is also authorised to conduct a search. This power is consistent with the other statutory powers and responsibilities of police officers.

However, any police officer or authorised officer must not conduct an unclothed search unless they are authorised by the relevant authorising authority for their facility.

Requirements as to gender of search officer conducting search

The Bill takes a best-practice approach to the 'required gender' of the search officer for particular searches.

The 'required gender' means male search officers search male youths and female search officers search female youths. Special provisions apply to youth who are transsexual, transgender or intersex. If their preferred gender is not immediately available, the youth may request a male or female search officer conduct the search.

A search that does not involve the removal of clothing or any touching is, as far as is reasonable and practical, to be conducted by a person of their own or required gender.

Searches that do involve the removal of clothes or touching of a youth must be conducted by the required gender unless the person in charge of the facility authorises an exception because

of the urgency of the search due to risk of harm to the youth. For unclothed searches, this also applies to persons observing the search.

The limited exceptions allowed by the Bill recognise that these provisions apply to all custodial facilities, including police watch-houses where officers of the required gender may not always be available. However, the exceptions are subject to appropriate safeguards depending on the type of search undertaken.

Conduct of searches and use of force

The Bill establishes decision-making criteria for the type of and manner in which searches are conducted. Searches of youth must only be conducted when a search officer or the relevant authorising authority believes on reasonable grounds the search is necessary for a relevant search purpose, which I will describe later. Also, the type and manner of search must be proportionate to the circumstances.

The Bill includes provisions supporting the implementation of the least intrusive framework in decision making and conduct of searches, including limitations on clothing removal, completing the search as quickly as possible, providing that any use of force is subject to the requirements of being the least intrusive option and the youth is afforded reasonable privacy.

The least intrusive framework continues to apply in both the authorisation and the conduct of unclothed searches. The Bill recognises searches of youth that involve removal of clothing have the potential to cause greater distress or trauma, and that it is the most intrusive type of search. It is also recognised this type of search will sometimes remain necessary for legitimate reasons, including the safety of the youth and other persons. For unclothed searches, the Bill requires specific approval from a relevant authorising officer to conduct this kind of search. There are also limitations to the purposes for which an unclothed search can be conducted. Unclothed searches cannot be conducted simply for the taking of items into safekeeping. This responds to an issue highlighted by the Aboriginal Land Council of Tasmania during consultation.

In applying these principles, some searches will still involve intrusive acts such as needing to touch a youth when searching, such as for frisk searches when necessary. Technically, any touching of another person under a statutory power can be seen as a 'use of force'. The Bill makes clear that the search officer must not use force unless it is the only means by which the search can be reasonably conducted, and must be the least amount of force necessary. Use of force is also subject to other relevant requirements, such as considering information provided by the youth, and reducing distress and trauma to the youth as far as practicable. This recognises that contact between the search officer and the youth can be necessarily part of some search types. However, the Bill responds to the Commissioner's recommendations on use of force by effectively making significant force, such as forcible restraint of a youth, a last resort.

To ensure accountability for use of force in searches of youths, the Bill provides for reporting requirements for the use of force, other than excluded force, to the person in charge of the custodial facility. For example, this ensures that relevant force will be recorded and reported for timely review.

Relevant search purposes

The purposes in the Bill for which a search can be conducted reflect the purposes already defined in Acts relating to searches in custody in custodial facilities, including the *Police Offences Act 1958*, *Corrections Act 1997* and *Youth Justice Act 1997*. That means a search can only be conducted when one of the purposes of the search is associated with: the safety of youth or others, to obtain evidence, to ascertain whether the youth has possession of a concealed weapon or drugs and, where the search is a clothed search, the removal of articles belonging to the youth.

Determination of least intrusive type and manner of search

The Tasmanian Government has listened to stakeholder feedback and has included a hierarchy of searches in the Bill. This provides clarity for search officers to enable them to determine the least intrusive search type against a continuum of search intrusiveness.

Informing Youth

The Commissioner's Memorandum of Advice highlighted the importance of youth being informed about searches while in custody, and recommended improvements to operational procedures in this regard.

The Bill establishes requirements that a youth is to be informed of the intent to search, informed if an unclothed search is to be conducted, and provided the opportunity to voluntarily surrender items in reasonable privacy. The Bill requires search officers to take into account information provided by youths, including their preferences, to ensure a trauma-informed approach.

In practice, for example, sometimes a search purpose might be achieved either through patting-down a youth's pockets or the youth removing their jacket to show whether their pockets are empty or not. Some youths may feel more vulnerable being patted down, while others may prefer a pat-down to taking off any clothing. This Bill ensures their preferences will be considered.

The Bill also requires general information to be available for viewing in custodial facilities about search obligations. This will help youth and their representatives know they can ask for more information about search procedures, complaint processes, and so on. A facility's search procedures must also be made available online, with any necessary redaction for security purposes.

Register of Searches

Our Government recognises consistent search register requirements are necessary to monitor the conduct of searches of youth in custody. The Bill requires these searches conducted under its provisions to be recorded in search registers, including the degree of intrusiveness, the use of force, and any other details required by regulations.

The register is to be available for inspection by the Custodial Inspector, the Ombudsman, a person approved by the person in charge of the custodial facility, or a person or body prescribed in regulations.

The Tasmanian Government expects relevant operational procedures may require review on commencement of this Bill and intends to engage with key stakeholders as part of this process. As always, this would include consultation, particularly between relevant Departments, the Commissioner and the Custodial Inspector.

Our Government is committed to further positive outcomes for children and young people through the Tasmanian Government's Youth Justice Reform process being undertaken by the Minister for Education, Children and Youth.

Mr Speaker, I commend the Bill to the House.