

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 544

Cape Town

5 October 2010

No. 33607

THE PRESIDENCY

No. 873

5 October 2010

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 6 of 2010: Criminal Law (Forensic Procedures) Amendment Act, 2010.



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GENERAL EXPLANATORY NOTE:

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- Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 1 October 2010.)

ACT

To amend the Criminal Procedure Act, 1977, so as to provide for the compulsory taking of fingerprints of certain categories of persons; to provide for the taking of fingerprints and body-prints for investigative purposes; to further provide for the retention of fingerprints and body-prints taken under the Act; to further regulate the destruction of fingerprints taken under the Act; to further regulate proof of certain facts by affidavit or certificate; to amend the South African Police Service Act, 1995, so as to regulate the storing and use of fingerprints, body-prints and photographic images of certain categories of persons; to provide for the keeping of databases and to allow for comparative searches against those databases; to provide for security measures relating to the integrity of information stored on these databases; to make provision for the development of standing operating procedures regarding access to the databases of other state departments; to amend the Firearms Control Act, 2000, so as to further regulate the powers in respect of fingerprints and body-prints for investigation purposes; to amend the Explosives Act, 2003, so as to further regulate the powers in respect of fingerprints and body-prints for investigation purposes; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

Substitution of heading to Chapter 3 of Act 51 of 1977

1. The following heading is hereby substituted for the heading of Chapter 3 of the Criminal Procedure Act, 1977:

“ASCERTAINMENT OF BODILY FEATURES OF PERSONS”.

Insertion of sections 36A, 36B and 36C in Chapter 3 of Act 51 of 1977

2. The following sections are hereby inserted in the Criminal Procedure Act, 1977, after section 36:

“Interpretation of Chapter 3

36A. (1) For the purposes of this Chapter, unless the context indicates otherwise—

- (a) **‘appropriate person’** means any adult member of a child’s family, or a care-giver of the child, which includes any person other than a parent or guardian who factually cares for a child, including—
 - (i) a foster parent;
 - (ii) a person who cares for a child with the implied or express consent of a parent or guardian of the child;
 - (iii) a person who cares for a child whilst the child is in temporary safe care;
 - (iv) the person at the head of a child and youth care centre where a child has been placed;
 - (v) the person at the head of a shelter;
 - (vi) a child and youth care worker, who cares for a child who is without appropriate family care in the community; and
 - (vii) a child at the head of a child-headed household, if such a child is 16 years or older;
 - (b) **‘authorised person’** means, with reference to photographic images, fingerprints or body-prints, any police official in the performance of his or her official duties;
 - (c) **‘body-prints’** means prints other than fingerprints, taken from a person and which are related to a crime scene, but excludes prints of the genitalia, buttocks or breasts of a person;
 - (d) **‘child’** means a person under the age of 18 years;
 - (e) **‘Child Justice Act’** means the Child Justice Act, 2008 (Act No. 75 of 2008);
 - (f) **‘comparative search’** means the comparing of fingerprints, body-prints or photographic images, taken under any power conferred by this Chapter, by an authorised person against any database referred to in Chapter 5A of the South African Police Service Act; and
 - (g) **‘South African Police Service Act’** means the South African Police Service Act, 1995 (Act No. 68 of 1995).
- (2) Any police official who, in terms of this Act or any other law takes the fingerprints, a body-print or ascertains any bodily feature of a child must—
- (a) have due regard to the personal rights relating to privacy, dignity and bodily integrity of the child;
 - (b) do so in a private area, not in view of the public;
 - (c) ensure the presence of a parent or guardian of the child, a social worker or an appropriate person; and
 - (d) treat and address the child in a manner that takes into account his or her gender and age.

Powers in respect of fingerprints of accused and convicted persons

36B. (1) A police official must take the fingerprints or must cause such prints to be taken of any—

- (a) person arrested upon any charge related to an offence referred to in Schedule 1;
- (b) person released on bail if such person’s fingerprints were not taken upon arrest;
- (c) person upon whom a summons has been served in respect of any offence referred to in Schedule 1;
- (d) person convicted by a court and sentenced to a term of imprisonment without the option of a fine, whether suspended or not, if the fingerprints were not taken upon arrest;
- (e) person convicted by a court in respect of any offence, which the

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Minister has by notice in the *Gazette* declared to be an offence for the purposes of this subsection.

(2) A police official may take or cause—

- (a) fingerprints to be taken of any person arrested upon any charge; or
- (b) fingerprints to be taken of a person deemed under section 57(6) to have been convicted in respect of any offence, which the Minister has by notice in the *Gazette* declared to be an offence for the purposes of this subsection.

(3) The fingerprints taken in terms of this section must be stored on the fingerprint database maintained by the National Commissioner, as provided for in Chapter 5A of the South African Police Service Act.

(4) A police official may again take the fingerprints of any person referred to in subsection (1), if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his or her fingerprints;
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching; or
- (c) the fingerprints taken were lost, misfiled or not stored on the database.

(5) The fingerprints taken under any power conferred by this section, may be the subject of a comparative search.

(6) (a) Subject to paragraph (c), any fingerprints, taken under any power conferred by this section—

- (i) must upon the conviction of an adult person be retained on a database referred to in Chapter 5A of the South African Police Service Act;
- (ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act; and
- (iii) in a case where a decision was made not to prosecute a person, if the person is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court or if he or she is discharged at a preparatory examination or if no criminal proceedings with reference to such fingerprints or body-prints were instituted against the person concerned in any court or if the prosecution declines to prosecute, must be destroyed within 30 days after the officer commanding the Division responsible for criminal records referred to in Chapter 5A of the South African Police Service Act has been notified.

(b) Fingerprints retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution.

(c) Subparagraphs (a)(i) and (ii) do not prohibit the use of any fingerprints taken under any powers conferred by this section, for the purposes of establishing if a person has been convicted of an offence.

(d) Any person who, with regard to any fingerprints, body-prints or photographic images referred to in this Chapter—

- (i) uses or allows the use of those fingerprints, body-prints or photographic images for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution; or
- (ii) tampers with or manipulates the process or the fingerprints, body-prints or images in question; or

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- (iii) falsely claims such fingerprints, body-prints or images to have been taken from a specific person whilst knowing them to have been taken from another person or source,
is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years. 5
- (7) The National Commissioner must destroy the fingerprints of a child upon receipt of a Certificate of Expungement in terms of section 87(4) of the Child Justice Act.
- (8) Subsection (1)(d) applies to any person convicted of any crime, irrespective of the sentence, including— 10
- (a) any person serving such a sentence at the time of the commencement of this section; and
- (b) where applicable, any person released on parole in respect of such a sentence, irrespective of the fact that such a person was convicted of the offence in question, prior to the commencement of this section. 15

Fingerprints and body-prints for investigation purposes

- 36C.** (1) Any police official may without warrant take fingerprints or body-prints of a person or a group of persons, if there are reasonable grounds to—
- (a) suspect that the person or that one or more of the persons in that group has committed an offence referred to in Schedule 1; and 20
- (b) believe that the prints or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of those persons as possible perpetrators of the offence.
- (2) Prints taken in terms of this section may— 25
- (a) be examined for the purposes of the investigation of the relevant offence or caused to be so examined; and
- (b) be subjected to a comparative search.
- (3) (a) Subject to paragraph (c), any fingerprints or body-prints, taken under any power conferred by this section— 30
- (i) must upon the conviction of an adult person be retained on a database referred to in Chapter 5A of the South African Police Service Act;
- (ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act; and 35
- (iii) in a case where a decision was made not to prosecute a person, if the person is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court or if he or she is discharged at a preparatory examination or if no criminal proceeding with reference to such fingerprints or body-prints were instituted against the person concerned in any court or if the prosecution declines to prosecute, must be destroyed within 30 days after the officer commanding the Division responsible for criminal records referred to in Chapter 5A of the South African Police Service Act has been notified of such event as referred to in this paragraph. 40
- (b) Fingerprints or body-prints which may be retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution. 45
- (c) Subparagraphs (a)(i) and (ii), does not prohibit the use of any fingerprints or body-prints taken under any powers conferred by this section, for the purposes of establishing if a person has been convicted of an offence. 50 55