

JAMAICA

No. 15 – 2005

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

8th day of April, 2005.

AN ACT to Amend the Finger Prints Act.

[The date notified by the Minister
bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Finger Prints (Amendment) Act, 2005, and shall be read and construed as one with the Finger Prints Act (hereinafter referred to as the principal Act) and all amendments thereto, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title,
construction
and
commencement.

2. Section 2 of the principal Act is amended—

(a) by deleting the definition of “authorized officer” and substituting therefor the following—

Amendment
of section 2 of
principal Act.

“authorized officer” means for the purpose of—

(a) section 3, any officer or sub-officer of the Jamaica Constabulary Force, or any correctional officer appointed as such by the Minister;

- (b) sections 3A and 3B, an officer of the Jamaica Constabulary Force not below the rank of Superintendent or, in the case of a sub-officer of the Jamaica Constabulary Force in charge of a police station, the sub-officer;
- (c) section 6, any officer or sub-officer of the Jamaica Constabulary Force;
- (d) by inserting next after the definition of—
 - “authorized officer”, in the appropriate alphabetical sequence, the following—
 - “Children's Advocate” means the Office of the Children's Advocate constituted under section 4 of the Child Care and Protection Act;
 - “deportation order” means an order defined as such in the Criminal Justice (Administration) Act;
 - “finger print” includes a palm print and a foot print;
 - “guardian” in relation to a juvenile, includes any person who, in the opinion of a Justice of the Peace having cognizance of any matter in relation to the juvenile, or in which the juvenile is concerned, has for the time being charge of or control over the juvenile;
 - “restricted person” means any person who is the subject of an order made under section 54B(1) of the Criminal Justice (Administration) Act;”.

3. Section 3 of the principal Act is amended—

Amendment of section 3 of principal Act.

- (a) in subsection (1), by inserting immediately—
 - (i) after the words “Traffic Court” the words “, Children's Court, Family Court”;
 - (ii) before the word “Schedule” the word “First”; and
 - (iii) after the words “finger prints” the words “and photograph”; and
- (b) in subsection (2), by inserting immediately after the words “finger prints” wherever they appear, the words “and photograph”.

4. The principal Act is amended by inserting next after section 3 the following as sections 3A and 3B—

Insertion of new sections 3A and 3B in principal Act.

“Taking of finger prints and photograph of persons in custody.

3A.—(1) Where a person is taken into custody on reasonable suspicion of having committed an offence, that person’s finger prints and photograph—

subject to subsection (2), shall not be taken unless the authorized officer informs the person of such matters as may be prescribed and that—

- (i) he has the right to refuse to have his finger prints and photograph taken;
- (ii) if he consents to have his finger prints and photograph taken, the consent shall be signified on the prescribed form in the presence of a Justice of the Peace and where he is represented by an attorney-at-law, in the presence of his attorney-at-law;

- (iii) his finger prints and photograph may be taken without his consent and without a court order in the circumstances set out in subsection (4).

(2) If the person taken into custody is between the ages of twelve and eighteen years, the consent to the taking of the person's finger prints and photograph shall be obtained from—

- (a) his parent or guardian; or
- (b) if a parent or guardian cannot be located, the Children's Advocate or a person nominated by him in such form and manner as may be prescribed,

and the parent, guardian, Children's Advocate or his nominee, shall signify such consent on the prescribed form in the presence of a Justice of the Peace and where he is represented by an attorney-at-law, in the presence of his attorney-at-law.

(3) Where consent is not obtained as mentioned in subsection (2), an application shall be made to the Children's Court or Family Court for an order authorizing the taking of the person's finger prints and photograph.

(4) Where a person is taken into custody on reasonable suspicion of having committed an offence, the finger prints and photograph of that person may be taken, without his consent and without a Court Order, on the written authorization of an authorized officer not below the rank of a Superintendent in the following circumstances—

- (a) the person is diagnosed by a medical practitioner as suffering from a mental

disorder and is thereby incapable of giving consent and a certificate signed by the medical practitioner is received by the authorized officer; or

(b) the authorized officer has reasonable grounds to suspect that the person—

(i) has been involved in the commission of an offence specified in the Second Schedule and the taking of his finger prints and photograph will help to confirm or disprove his involvement therein;

(ii) has given an identity that is not accurate.

Second Schedule.

Taking of finger prints and photograph of deported person. First and Second Schedule.

3B.—(1) This section applies to a person who has been convicted in a foreign state of an offence similar to an offence specified in the First or Second Schedule and is the subject of a deportation order.

(2) On the arrival of such a person in Jamaica, his finger prints and photograph may be taken by an authorized officer with the person's consent signified on the prescribed form in the presence of a Justice of the Peace, and where he is represented by an attorney-at-law, in the presence of his attorney-at-law."

5. The principal Act is amended by repealing section 4 and substituting therefor the following—

Repeal and replacement of section 4 of principal Act.

"Recording of conviction and sentence on finger print form. First and Second Schedule.

4. If the person who is fingerprinted and photographed is convicted of an offence specified in the First or Second Schedule, that conviction and sentence shall be recorded in the space provided for that purpose on the finger print form."

Insertion of
new sections
4A and 4B
in principal
Act

6. The principal Act is amended by inserting next after section 4 the following as sections 4A and 4B—

“Destruction,
etc. of
finger print
form and
photograph
on acquittal.

4A.—(1) Where the person who is fingerprinted and photographed is acquitted of the charge, the finger print form and photograph shall, subject to subsections (4) and (5) (b), be destroyed within three months from the date of acquittal and the person or his attorney-at-law shall be given prior notice of the date, time and location of such destruction.

(2) Where a person between the ages of twelve and seventeen, who is fingerprinted or photographed is convicted or acquitted of the charge, as the case may be, the finger print form and photograph shall be destroyed within three months from the date of the conviction or acquittal and the person or his attorney-at-law shall be given prior notice of the date, time and location of such destruction.

(3) Upon an application in writing, a certificate of destruction shall be forwarded to the person or his legal representative.

(4) Where the Commissioner of Police is of the view that the finger print form and photograph of a person referred to in subsection (1) should not be destroyed, the Commissioner shall, upon the acquittal of that person, make an application to the Court before which the person was acquitted, for the retention of the finger print form and photograph.

(5) An application under subsection (4)—

- (a) may be made where the Commissioner has reasonable grounds to suspect that the person has been involved in the commission of another offence specified in the First or Second Schedule for which he has not been charged;

First and
Second
Schedule.

- (b) shall not be made in respect of a person between the ages of twelve and seventeen.

Destruction of finger prints and photograph where person not charged, etc.

4B.—(1) Where a person who is fingerprinted and photographed—

- (a) is not charged; or
- (b) is charged, but the prosecution does not proceed with the charge or the proceedings are discontinued,

the finger print form and photograph shall, subject to subsection (4), be destroyed within three months from the relevant date or from the date on which the prosecution decides not to proceed or the proceedings are discontinued, as the case may require and the person or his attorney-at-law shall be given prior notice of the date, time and location of such destruction.

(2) Subject to subsection (4), the finger print form and photograph of a person to whom section 3B applies shall be destroyed—

- (a) if the person is not a restricted person, within six months from the relevant date; or
- (b) if the person is a restricted person, within six months from the date of expiration of the order made under section 54B of the Criminal Justice (Administration) Act.

(2A) Prior to the destruction of the finger print form and photograph, the person and his attorney-at-law, if any, shall be given notice in writing of the date, time and location of such destruction and that he may witness the destruction if he so requires.

(3) Upon an application in writing, a certificate of destruction shall be forwarded to the person or his legal representative.

(4) Where the Commissioner of Police is of the opinion that the finger print form and photograph of a person referred to in subsections (1) and (2) should not be destroyed, the Commissioner shall within the period referred to in subsection (2)(a) and (b), make an application to a Judge of the Supreme Court for the finger print form and photograph to be retained.

(5) An application under subsection (4) may be made where the Commissioner has reasonable grounds to suspect that the person has been involved in the commission of an offence specified in the Second Schedule for which he has not been charged.

Second
Schedule.

(6) In subsections (1) and (2) "relevant date" means the date on which a person is fingerprinted and photographed."

(7) For the purposes of sections 4A and this section, any reference to the destruction of the finger print form and photograph includes a reference to the destruction of any record or any copy, however made.

Amendment
of section 5
of principal
Act.

7. Section 5 of the principal Act is amended by inserting after the word "forms" the words "and photographs".

Amendment
of section 6
of principal
Act.

8. Section 6 of the principal Act is amended—

(a) in the marginal note thereto, by inserting immediately after the words "Finger print form" the words "and photograph";

(b) by inserting next after subsection (2) the following—

“ (3) Any photograph taken pursuant to this Act shall be admissible in evidence in any court, subject to rules of court.”

(4) A photograph taken pursuant to this Act may be used for the purpose of—

(a) investigating an offence where—

(i) the person has refused to take part in an identification parade; or

- (ii) the person's appearance has changed significantly since the offence was committed;
- (b) identifying any person who has escaped from lawful custody;
- (c) the prevention of detection of crime;
- (d) the investigation of an offence; or
- (e) the conduct of criminal prosecution.

(5) Where an authorized officer shows photographs to a witness for the purpose of investigating an offence, the following rules shall apply—

- (a) the witness shall be shown photographs of at least twelve different persons;
- (b) each photograph of a person who is not the suspect shall be of a person who—
 - (i) resembles the suspect in age and general appearance; and
 - (ii) does not have features visible in the photograph that are markedly different from those of the suspect as described by the witness before viewing the photographs;
- (c) the photographs shown to the witness shall not suggest that they are photographs of persons in police custody;
- (d) the authorized officer shall not, in doing so, act unfairly towards the suspect or suggest to the witness that a particular photograph is the photograph of the suspect or of a person who is being sought by the police in respect of an offence;

- (e) if practicable, the photograph of a person who is a suspect shall be one taken after the person was taken into custody or considered as a suspect;
- (f) the witness shall be told that a photograph of the suspect may not be amongst those being seen by the witness;
- (g) the authorized officer shall keep, or cause to be kept, a record identifying each photograph that is shown to the witness;
- (h) the authorized officer shall notify the suspect or his legal representative in writing that a copy of the record is available to the suspect;
- (i) the authorized officer shall retain the photographs shown, and shall allow the suspect or his legal representative, upon application, an opportunity to inspect the photographs; and
- (j) the authorized officer shall ensure that the suspect's attorney-at-law or duty Counsel and a Justice of the Peace are present when the photographs are being shown to the witness.

(6) The Minister may amend subsection (5) by order subject to affirmative resolution.”.

Amendment of section 7 of principal Act.

9. Section 7 of the principal Act is amended by deleting the word “Schedule” wherever it appears and substituting therefor in each case the words “First or Second Schedule”;

Repeal and replacement of section 8 of principal Act.

10. The principal Act is amended by deleting section 8 and substituting therefor the following—

“Rules.

8.—(1) The Minister may make rules generally for carrying into effect the purposes of this Act, and for regulating the work of the Finger Print Bureau.

(2) Any rules made pursuant to subsection (1) shall be subject to affirmative resolution.”.

11. Section 9 of the principal Act is amended by inserting immediately before the word “Schedule” wherever it appears the words “First or Second”.

Amendment of section 9 of principal Act.

12. The principal Act is amended by inserting next after section 9, the following as section 10—

Insertion of new section 10 in principal Act.

“Penalties 10. Any person who acts in contravention of—

(a) this Act; or

(b) the rules made pursuant to section 8,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”.

13. The Schedule to the principal Act is repealed and the following substituted therefor—

Repeal and replacement of Schedule

“ FIRST SCHEDULE (Sections 3, 3B, 4, 4A, 7 and 9)

1. Any offence against the following sections of the Criminal Justice (Administration) Act—

(a) section 46 (offences under Part II after a second conviction of crime, powers of taking such offender into custody) ;

(b) section 51 (penalty for harbouring thieves);

(c) section 52 (assaults on Police).

2. Any offence against section 15 (penalties for breach of orders) of the Deportation (Commonwealth Citizens) Act.

3. Any offence against the following sections of the Road Traffic Act—

(a) section 34 (driving motor vehicles under influence of drink or drugs);

(b) section 34A (driving or being in charge of a vehicle while blood-alcohol levels exceed prescribed limit);

- (c) section 45 (unlawful user of motor vehicle);
- (d) section 46(a) (fraudulently altering or using any licence, licensing or registration mark or plates).
- 4. Any offence under the Unlawful Possession of Property Act.
- 5. Any offence against section 29 (prohibition of offensive weapon) of the Public Order Act.
- 6. Any indictable offence not specified in the Second Schedule.

SECOND SCHEDULE (Sections 3A, 3B, 4,
4A, 4B, 7 and 9)

- 1. Any offence under the Dangerous Drugs Act.
- 2. Any offence under the Firearms Act.
- 3. Any offence under the Explosives (Control of Manufacture) Act.
- 4. Any offence under the Explosives (Sale of Deposited Stores) Act.
- 5. Any offence under the Gunpowder and Explosives Act.
- 6. Any offence against the following sections of the Offences Against the Person Act—
 - (a) section 2 (capital murder) and (non-capital murder);
 - (b) section 8 (conspiring or soliciting to commit murder);
 - (c) section 9 (manslaughter);
 - (d) section 11 (petit treason);
 - (e) section 13 (administering poison, or wounding with intent);
 - (f) section 14 (destroying or damaging buildings with intent to murder);
 - (g) section 15 (setting fire to shop, *et cetera*, with intent to murder);
 - (h) section 16 (attempting to administer poison *et cetera*, with intent to murder);
 - (i) section 17 (by other means attempting to commit murder);
 - (j) section 31 (endangering passengers on a train);
 - (k) section 33 (genocide);
 - (l) section 44 (rape);

- (m) section 47 (defilement of female idiot or imbecile);
 - (n) section 48 (carnally knowing girl under twelve);
 - (o) section 50 (carnally knowing girl above twelve and under sixteen);
 - (p) section 56 (forcible abduction);
 - (q) section 57 (abduction of girl under sixteen);
 - (r) section 60 (abduction of girl under eighteen with intent to have carnal knowledge);
 - (s) section 61 (unlawful detention with intent to have carnal knowledge);
 - (t) section 70 (kidnapping);
 - (u) section 79 (outrages on decency).
7. Treason.”.