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拘捕被告 強制導尿之檢討

A Reflection on the Forced Urinary Catheterization of Arrested Defendants

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摘要

實務上,驗尿是判斷犯罪嫌疑人或被告有無施用毒品的常見方法,其中最有爭議的是,司法警察依刑事訴訟法第205條之2,執行拘捕取證時,能否將拘捕的犯罪嫌疑人或被告,送至醫院強制插管導尿,藉此採取尿液檢驗。強制插管導尿,是具有侵入性的身體檢查。在德國,具有侵入性的身體檢查,必須對犯罪嫌疑人或被告有初步懷疑,在符合令狀原則、法官保留原則,以及考量是否會造成犯罪嫌疑人或被告的身體健康侵害,才能依法發動。本文借鑑德國法,檢討我國現行制度,並提出些許建議。

In practice, a urinalysis is a common method for judging if a suspect or an accused has used drugs. The most

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關鍵詞:身體檢查 (physical examination)、拘捕取證 (obtain evidence from an arrested person)、侵入性 (invasive)、導尿 (urinary

catheterization)

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controversial issue is, according to Article 205-2 of Code of Criminal Procedure, whether a judicial policeman is allowed to send a suspect or an accused to hospitals at the time of they are arrested and force them to be catheterized for a urine examination. A forced urinary catheterization is a kind of invasive physical examination. In Germany, an intrusive physical examination can only be legally applied to a suspect or an accused when there is initial suspicion of them, in accordance with the rule of warrant requirement and with consideration of whether it will cause harm to their physical health. This article refers to German laws to reflect on our own current legal system as well as giving some suggestions.

壹、前言

施用毒品犯罪的追訴,是臺灣社會關注的議題之一。實務上,為了判斷犯罪嫌疑人或被告有無施用毒品,運用尿液採驗、毛髮採驗或抽血檢驗等方式進行調查;其中,以較為迅速、簡易的尿液採驗最為常見1。對於尿液的採集,刑事訴訟法並無明確規定。實務上司法警察拘捕被告,在無令狀的情況下,對之強制導尿,其正當性如何,值得討論。

所謂「強制導尿」,是以導尿管強行插入犯罪嫌疑人或被告的尿道至膀胱,讓尿液自行引流而出,屬於侵入性的身體檢查。為了發現真實,強制採驗尿液,固然有其必要性,但同時

¹ 世界上並沒有完美的檢測方式。尿液採驗便捷,但因人體代謝,施用毒品3、4天後,便難以檢驗;反之,毛髮採驗的成本較高,但比較能夠判斷究竟是施用何種毒品。可以參考:張耀仁,尿液檢驗與毛髮檢驗誰準,https://www.labmed.org.tw/knowledge_1.asp?mno=39(瀏覽日期:2022年2月8日)。