

**Drug Dependent Persons Treatment and Rehabilitation
Centres (Licensing) Bill**

Prosecution authority for offences under the Bill

At the Bills Committee meeting on 15 January 2001, Members discussed the ways to protect personal information of residents at drug treatment and rehabilitation centres which might be obtained by the Director of Social Welfare and delivered to the Police under clause 18 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill (the Bill). In this connection, Members requested the Administration to provide further information on existing practices under other licensing schemes administered by the Social Welfare Department (SWD) and consider the possibility of the Director of Social Welfare taking up all matters relating to the prosecution of any offence under the Bill for the purpose of limiting the other department's access to residents' information. The Administration gave a verbal response on this to the Bills Committee on 22 January 2001. The content of the response, together with the latest advice from the Department of Justice and the Social Welfare Department, are appended below.

Prosecution Authority

2. Article 63 of the Basic Law states that the Department of Justice shall control criminal prosecutions free from any interference. In discharging this function in relation to criminal proceedings before a magistrate, the Secretary for Justice may, pursuant to section 13 of the Magistrate Ordinance (Cap. 227) appoint any public officer to act as public prosecutor and to conduct generally on her behalf any prosecution before the magistrate.

3. The Police is charged generally with the responsibility of prevention and investigation of crimes. The Police assists in investigation into most of the offences under the laws of Hong Kong.

**Prosecution authorities under the licensing schemes administered by
Social Welfare Department**

4. SWD administers two licensing/registration schemes, including the licensing of residential care homes for the elderly under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) and the registration of child care centres under the Child Care Services Ordinance (Cap. 243).

(a) Residential care homes for the elderly

5. For any offence alleged to have been committed contrary to the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), SWD will conduct the investigation and prosecution. After investigation and before prosecution, SWD will seek legal advice from the Department of Justice. If prosecution is to be proceeded with, designated officers of SWD will, under the authorization of the Secretary for Justice in accordance with section 13 of the Magistrates Ordinance (Cap. 227), act as public prosecutor before a magistrate. According to the advice of the Department of Justice, the officers who act as the public prosecutors should be different from those who investigate the case. Police is normally not involved throughout the process except when resistance is encountered or anticipated.

(b) Child care centres

6. For any offence alleged to have been committed contrary to the Child Care Services Ordinance (Cap. 243), SWD will conduct the investigation. Afterwards, SWD will seek legal advice from the Department of Justice which will be responsible for the prosecution, Police is normally not involved throughout the process except when resistance is encountered or anticipated.

Consideration

7. It can be seen from the above that according to the above mentioned licensing/registration schemes administered by SWD, the prosecution role is performed by the Department of Justice, or by SWD acting under the authorisation of the Secretary for Justice. Police will not be involved in the prosecution process in both cases.

8. The original intention of clause 18 of the Bill is to ensure that the investigation and prosecution roles are taken up by two distinct parties. The proposal that Police should investigate and/or prosecute has taken into account the fact that the Licensing Office in respect of the enforcement of the future Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance is only staffed by two social work staff, hence it will be difficult to spare manpower to conduct investigation and undertake prosecution.

9. The Department of Justice advises that its court prosecutors usually only conduct the prosecution of cases initiated by the Police. If SWD is charged with the investigation of cases under the Bill, it will be more appropriate for SWD to prosecute. However, the Department of Justice has to be satisfied that SWD is competent to prosecute before appointment under section 13 of the Magistrates (Cap. 227) will be made. If appointment is made, the Department of Justice will provide the relevant training.

10. In spite of the consideration set out in paragraph 8 above, the Administration considers that the proposal of SWD assuming the role of prosecutor for offences under the Bill is viable, given that technical constraints including resource and training can be resolved. The Administration would therefore be prepared to amend the Bill to delete the provisions in respect of passing information to the Police.

Security Bureau
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