

For Information
on 2 March 2010

**Legislative Council Panel on Security
Law Reform Commission (LRC) Report
on Sexual Offences Records Checks for Child-related Work**

Introduction

This paper provides background information on the Law Reform Commission (LRC) Report on Sexual Offences Records Checks for Child-related Work: Interim Proposals.

LRC Report on Sexual Offences Records Checks for Child-related Work: Interim Proposals

2. In April 2006, the LRC formed a Sub-committee to review the existing sexual offences under the criminal law. In October 2006, the Sub-committee's terms of reference were extended to include consideration whether a scheme for the registration of offenders convicted of sexual offences should be established.

3. In July 2008, the Sub-committee issued a consultation paper to seek views and comments from the community including organisations such as schools, children and mentally incapacitated persons (MIPs) concern groups, public organisations (including Office of the Privacy Commissioner for Personal Data and Equal Opportunities Commission) and offender rehabilitation concern groups, as well as members of the public on establishing a mechanism for sexual offences records checks. About 200 written responses were received. After considering these responses, the LRC published the report on Sexual Offences Records Checks for Child-related Work: Interim Proposals on 2 February 2010.

4. For protecting children and MIPs against sexual assault from sex offenders, the report recommends that the Administration should establish an administrative scheme which would enable an employer to request a job applicant to apply to the relevant authority for proof as to whether the job applicant has any criminal conviction record for sexual offences, before employing the job applicant for work relating to children and MIPs. The LRC has also made the following specific recommendations relating to the implementation of the proposed scheme-

- broad community notification not recommended;
- establishment of an administrative scheme for sexual offences

- records checks recommended;
- the scheme should only cover work relating to children and mentally incapacitated persons;
- checks should not be made mandatory;
- the proposed scheme should apply to prospective employees in the initial phase, and be extended to cover existing employees at a later stage;
- the current scheme of Certificate of No Criminal Conviction could be modified and adapted to enable the type of checks to be conducted;
- only sexual offences specified in the report could be revealed;
- information other than records of conviction should not be revealed; and
- spent convictions should not be disclosed.

The summary of recommendations made in the report is set out in Annex.

5. The Administration welcomes the recommendations made by the LRC on setting up of a sexual offences records checks mechanism. The Administration has always been highly concerned about sexual offences against children, and the Police also give high priority to combating these crimes. When considering the establishment of such a scheme, we have to strike a careful balance between offering protection to children from abuse on one hand, and giving due consideration to the privacy and rehabilitation needs of ex-offenders on the other.

Security Bureau
March 2010

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Summary of recommendations

(Extracted from page 89 to 90 of the report)

**Recommendation 1: Broad community notification not
recommended**

The LRC does not recommend the introduction in Hong Kong of a US-style "Megan's Law" whereby the names and other personal information of sex offenders are made available for inspection by the general public.

Recommendation 2: Sexual conviction record check

As an interim measure, the LRC recommends the establishment of an administrative scheme to enable the criminal conviction records for sexual offences of persons who undertake child-related work and work relating to mentally incapacitated persons to be checked, and that proper measures should be built into the system to address human rights and rehabilitation concerns.

**Recommendation 3: Child-related work and work relating to
mentally incapacitated persons**

The LRC recommends that for the purposes of these recommendations "child-related work" be defined as work where the usual duties involve, or are likely to involve, contact with a child (ie a person aged under 18). Further, "work relating to mentally incapacitated persons" (or "MIP-related work") should include work where the usual duties involve, or are likely to involve, contact with a mentally incapacitated person. Employees, volunteers, trainees and self-employed persons undertaking child-related work or MIP-related work should be covered by the proposed system.

Recommendation 4: Checks should not be mandatory

The LRC recommends that employers of persons engaged in child-related work or MIP-related work, voluntary or paid, full-time or otherwise, should be able to check whether an employee has any previous convictions for sexual offences. The LRC recommend, however, that for the purpose of the interim measure such a check should not be mandatory.

Recommendation 5: Whether the proposed scheme should apply to both existing and prospective employees

The LRC recommends that the proposed scheme should apply to both existing and prospective employees. The scheme should be implemented in stages, covering prospective employees only in the initial phase, and then extending to existing employees; but in view of the strong community support in favour of an extension, the scheme should be extended to existing employees as soon as practicable.

Recommendation 6: Method of application

The LRC recommends that the current schemes of Certificate of No Criminal Conviction ("CNCC") and data access requests for criminal conviction data be modified and adapted to enable the type of checks proposed in this report to be conducted. The checks should be initiated by the job applicant/data subject and sufficient personal data privacy safeguards should be put in place to regulate the amount of personal data to be disclosed, the purpose of disclosure, and the accuracy and retention period of the records. A "clean" record check result would not be recorded in writing but would be communicated verbally to the applicant or his employer.

Recommendation 7: Types of offences to be covered by the scheme

The LRC recommends that the proposed sexual conviction records check should reveal only specified sexual offences. Employers should be made aware of the limitations of the check: offences committed out of Hong Kong and criminal convictions for offences not listed will not be revealed by the proposed check.

Recommendation 8: Information other than records of conviction

The LRC recommends that information other than conviction records should not be revealed by the proposed sexual conviction records check. If the applicant has been arrested or charged with a sexual offence, but not yet convicted or acquitted, the check will not be further processed until the conclusion of the matter or, with the specific consent of the applicant, it will be processed with the disclosure to the employer of the fact of the applicant's arrest or charge. The public should be made aware that the proposed scheme would not cover allegations or acquittals.

Recommendation 9: Spent convictions

As an interim measure, the LRC recommends that convictions of sexual offences that are regarded as "spent" under section 2 of the Rehabilitation of Offenders Ordinance (Cap 297) should not be disclosed under the proposed sexual conviction records check.