

立法會
Legislative Council

LC Paper No. CB(2) 91/00-01

(These minutes have been seen by
the Administration and cleared with
the Chairman)

Ref : CB2/BC/29/98

**Bills Committee on
Dangerous Drugs, Independent Commission Against Corruption
and Police Force (Amendment) Bill 1999**

**Minutes of meeting
held on Thursday, 8 June 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon CHENG Kai-nam, JP
Hon Emily LAU Wai-hing, JP

Members absent : Hon Albert HO Chun-yan
Hon Mrs Selina CHOW LIANG Shuk-ye, JP

Public Officers attending : Miss Eliza YAU
Principal Assistant Secretary for Security E

Miss Angela LEE
Assistant Secretary for Security E

Mr J M H BICKNELL
Chief Superintendent of Police, Crime Support
Hong Kong Police Force

Ms Carmen CHU
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Meeting with the Administration

Clause-by-clause examination of the Bill

Members continued to examine the Bill clause-by-clause.

Proposed section 59C (Non-intimate samples)

2. The Chairman pointed out that under the common law, there was a rule against self-incrimination. He asked whether the use of DNA information obtained from a person in criminal proceedings against the person under the proposed section 59C(4)(f) of the Police Force Ordinance (Cap. 232) (PFO) was in contravention of the Hong Kong Bill of Rights Ordinance (Cap. 383).

3. Senior Government Counsel (SGC) said that in the drafting of the Bill, consideration had not been given to the rule against self-incrimination. To her knowledge, there had not been any challenge in overseas countries that the taking of DNA information from a person was in contravention of human rights. She added that the Human Rights Unit of the Department of Justice had been consulted in the drafting of the Bill. Senior Assistant Legal Adviser (SALA) added that the rule against self-incrimination was a principle for criminal trials in a court. There was a precedent in the United Kingdom (UK) that the rule was not applicable to the process of obtaining evidence prior to trial.

4. The Chairman said that UK differed from Hong Kong in that it did not have any bill of rights legislation. Evidence obtained from a person was nevertheless eventually used in legal proceedings. He requested SALA to examine whether there were precedents relevant to the issue in other jurisdictions.

SALA

5. The Chairman considered that the proposed section 59C(4)(g) of PFO as

Action

Adm

presently drafted did not reflect that a person from whom a sample was taken was entitled to have access to information derived from the sample. He said that if such a right was not conferred by the Personal Data (Privacy) Ordinance (Cap. 486), the right should be explicitly conferred in the Bill. He requested the Administration to look into the issue.

Proposed section 59D (Limitations on use of samples and results of forensic analysis)

6. Referring to the proposed section 59D(3) of PFO, Principal Assistant Secretary for Security E (PAS(S)E) informed members that a fine at level 4 was \$25,000.

7. The Chairman said that the proposed section 59A(4)(e) of PFO should be drafted along the same line of the proposed section 59D(1) to set out clearly the use of DNA information obtained from a person for the investigation of any offence. SGC said that a Committee Stage amendment (CSA) would be moved to the Chinese text of the proposed section 59A(4)(e) by adding "或任何其他罪行" after "罪行".

8. The Chairman asked the Administration to consider amending the use of DNA information for the investigation of "any offence" to "any serious arrestable offence". Miss Emily LAU shared the same view. She said that as DNA information was a new kind of evidence, the enacted legislation should initially be more stringent. PAS(S)E said that overseas experience indicated that about two-thirds of offenders of sex and violent crime were re-offenders.

9. Mr CHENG Kai-nam asked about the effectiveness of use of DNA information in the investigation of offences other than serious arrestable ones. Chief Superintendent of Police (Crime Support) (CSP(CS)) said that DNA analysis results could give a high degree of certainty about whether a person was involved in a crime. It would be very difficult to confine the use of taking of DNA sample to serious arrestable offences since it was very difficult to determine whether an offence was a serious arrestable one. Even if an offence was a minor one, DNA information was so unique that it provided conclusive evidence on the involvement of a person in an offence. He added that the taking of a sample from a suspect was already subject to stringent requirements. The Administration would also revise the definition of a serious arrestable offence to cover offences with a maximum imprisonment term of seven years plus a schedule of sex and violent offences. A non-serious offence would also become a serious arrestable offence in the event that a victim died subsequently. The requirement on the taking of a sample from a suspect was stringent. Once a sample had been taken from a person, the remaining process was entirely not intrusive. Miss Emily LAU considered that if the trigger point for the taking of a sample was a serious arrestable offence, the information obtained should be used for the investigation of serious arrestable offences only.

10. Mr CHENG Kai-nam said that DNA information should be dealt with in the same manner as other evidence, unless it was very different from other evidence. He

Action

expressed support for the use of DNA information for the investigation of any other offence.

11. The Chairman said that the Bills Committee might put the issue to a vote when all members were present. He added that he might move CSAs relating to the issue if a consensus could not be reached by the Bills Committee.

Proposed section 59E ((Non-intimate samples of swabs from the mouths of convicted persons)

12. PAS(S)E informed members that the purpose of the proposed section 59E was to build up a database of DNA information of persons convicted of serious arrestable offences. This would facilitate the investigation of crime, as many offenders had previous record of committing crime.

13. The Chairman asked whether the Administration would consider amending the requirement for the taking of a buccal swab from whether a person was convicted of a serious arrestable offence to the imprisonment term of a convicted person.

14. PAS(S)E responded that such an amendment would be inappropriate. The Administration had pointed out at a previous meeting that an imprisonment term might not reflect the seriousness of an offence, as factors such as family background might have been taken into consideration in determining the sentence. CSP(CS) added that the taking of a buccal swab only sought to keep DNA information on record for easy identification in the future.

15. The Chairman considered that the keeping of DNA information of convicted persons in the DNA database was against the spirit of rehabilitation. He said that if a prisoner was to be given the opportunity for rehabilitation, his DNA information should be erased after a period of three years, as was the case with other criminal records. PAS(S)E said that DNA information did not form part of a criminal record. She considered it necessary to maintain a balance between public safety and individual rights.

16. The Chairman expressed concern that the keeping of too much individual information might result in social control in the event that there was a bad government. Mr CHENG Kai-nam objected to the assumption that the government was a bad one. He said that if a government was so bad, legislation would become meaningless as it would probably be disregarded by the government.

17. In response to Miss Emily LAU's question about the practice in overseas countries, Assistant Secretary for Security E said that the length of imprisonment term was not one of the considerations in determining whether a buccal swab should be taken from a convicted person in overseas countries.

Action

Estimated number of samples to be taken each year

18. Miss Emily LAU asked about the estimated number of samples to be taken each year after the enactment of the Bill. CSP(CS) responded that under the resources available, the Police would concentrate on taking samples from persons involved in offences such as rape, murder, serious assault, robbery, burglary and indecent assault. In the previous year, there were 1 200 arrests for robbery, 1 600 arrests for wounding, 25 arrests for kidnapping and 71 arrests for rape. About 29 000 persons were arrested for serious arrestable offence in 1999 and about 16 000 persons were convicted of the offence in 1998. As it was not the Administration's intention to take buccal swabs from each and every person caught under the Bill, the Administration estimated that the total number of samples taken would be in the region of 4 000 to 5 000 a year. He added that the Administration would issue internal guidelines on the taking of samples. PAS(S)E added that an increase in the number of samples taken in a year would require the seeking of additional funds from the LegCo Finance Committee. The Chairman requested the Administration to provide members with a copy of the internal guidelines.

Adm

19. Mr CHENG Kai-nam said that if the effectiveness of the 4 000 to 5 000 initial number of samples to be taken in a year was undesirable, the seeking of additional funds for the taking of more samples would not be justified.

20. The Chairman asked whether the Administration would take samples from all convicted persons, if there were sufficient resources. CSP(CS) said that the Administration had no such intention.

21. The Chairman asked the Administration to provide members with a paper on the estimated number of samples to be taken in each year after the enactment of the Bill.

Adm

II. Date of next meeting

22. Members noted that the following meeting had been scheduled for 9 June 2000 at 10:45 am to continue discussion with the Administration.

23. There being no other business, the meeting ended at 6:20 pm.