

LEGISLATIVE COUNCIL BRIEF

Crimes Ordinance (Chapter 200)

CRIMES (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 15 June 1999, the Council **ADVISED** and the Chief Executive **ORDERED** that the Crimes (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council to prohibit the arrangement and the advertising of child sex tourism and to provide extra-territorial effect to certain sexual offences committed against children.

BACKGROUND AND ARGUMENT

Present Position and Argument

2. Article 34 of the United Nations Convention on the Rights of the Child (UNCRC), which applies to Hong Kong, stipulates that children should be protected from all forms of sexual exploitation and sexual abuse.

3. Sexual exploitation of children can have international dimensions. Child sex tourism, i.e. arrangements which enable adults to travel from their home countries to other places, in particular less-developed places, to participate in sexual activities involving children, is known to exist in the South East Asia region. A number of countries, including Australia, the USA and many European countries, have enacted specific legislation against child sex tourism.

4. Hong Kong, through regular liaison with overseas law enforcement agencies, has been maintaining a close watch on the problem and assisted in investigation into a number of cases. While the extent of this problem in Hong Kong is difficult to gauge, Police intelligence suggests that such activities do exist. Hong Kong has been used as a transit point for child sex tours to South East Asian countries, taking advantage of Hong Kong's position as a communication hub. Given the heinousness of the trade and there are signs that it is on the rise in the region, we consider it necessary to enact specific legislation to deal with the problem. The nature of such activities requires joint international efforts to tackle the problem.

5. The Crimes Ordinance does not prohibit Hong Kong people from exploiting children sexually in other places. It does not provide protection to local children who may be abducted outside the territory and become targets of child sex tours. We therefore propose to introduce legislative amendments to provide extra-territorial effect to certain sexual offences under the Crimes Ordinance in respect of acts committed to children where the perpetrator or victim has a nexus with Hong Kong.

6. The proposed legislation will serve to demonstrate Hong Kong's commitment to combat child sex tourism, which is a positive step forward in implementing the UNCRC. With such legislation, children in Hong Kong and overseas will receive greater protection.

The Proposal

7. We propose to create an offence for arranging or advertising child sex tours. The offence covers any message sent through the Internet as well as any other form of electronic transmission.

8. We propose to give extra-territorial effect to 24 provisions of the Crimes Ordinance which are related to sexual abuse, as set out in Annex B. 14 of these provisions, under the existing Crimes Ordinance, are applicable to victims of any age. Four provisions currently apply to victims under the age of 21. For the purpose of the proposed legislation, the applicable age limit of the victims of these 18 provisions will be set at the age of under 16. Four of the remaining six provisions have applicable age limit of the victims set under the age of 16 and the other two under the age of 13. For these six provisions, the applicable age limit will remain the same for the purpose of the proposed legislation.

9. We further propose that the extra-territorial effect should cover the persons and corporations referred to in sub-paragraphs (a) to (c) below insofar as they are the perpetrators of the relevant criminal act outside Hong Kong and the persons referred to in sub-paragraph (a) below insofar as they are the victims of the relevant criminal act outside Hong Kong :

- (a) a person who is a permanent resident of Hong Kong or who ordinarily resides in Hong Kong;
- (b) a body corporate that is incorporated or registered in Hong Kong; or
- (c) a body of persons, whether corporate or unincorporate, whose principal place of business is Hong Kong.

THE BILL

10. The main provisions are -

- (a) Clause 2 of the Bill provides that any person who makes arrangements or advertises for persons to engage in certain sexual offences towards children under the age of 16 commits an offence. The maximum penalty on conviction on indictment is a fine of \$3 million and imprisonment for 10 years. A defence is available if a person can establish by evidence that he has not seen the advertisement and does not know nor have any cause to suspect that the advertisement advertises child sex tours.
- (b) Clause 4 gives extra-territorial effect to 24 provisions of the Crimes Ordinance relating to sexual offences towards children so that where a person or body corporate perpetrates the relevant criminal act outside Hong Kong and where either the perpetrator or the victim has a nexus with Hong Kong, the perpetrator can

be prosecuted. Clause 6 sets out a list of the 24 sexual offences towards children.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be -

Publication in the Gazette	25 June 1999
First Reading and commencement of Second Reading debate	30 June 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

14. The Bill does not affect the current binding effect of the existing provisions of the Crimes Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

15. We estimate that the number of cases of child sex tourism will not be substantial. The Police will absorb the additional workload arising from the proposed legislation from within their existing resources.

PUBLIC CONSULTATION

16. The Legislative Council Panel on Security and the Fight Crime Committee were consulted in September 1998 and they supported the proposals. Two rounds of public consultation were conducted in November 1998 and February 1999 with over 80 selected organisations including welfare agencies, youth organisations, concern groups and associations in the fields of information technology, mass communication and law. All of them supported the proposals in principle.

PUBLICITY

17. A press release and a Legislative Council brief will be issued on 23 June 1999. A spokesman will be available to handle press enquiries.

ENQUIRIES

18. Any enquiries to this brief could be directed to Mr Tony LAM, Assistant Secretary for Security, at 2810 2433.

Security Bureau
23 June 1999

Crimes (Amendment) Bill 1999 : Annexes

- Annex A - Crimes (Amendment) Bill 1999
- Annex B - Provisions of Crimes Ordinance which require extraterritorial effect

A BILL
To

Amend the Crimes Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Crimes (Amendment) Ordinance 1999.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Sections added

The Crimes Ordinance (Cap. 200) is amended by adding the following after section 147 -

"147AA. Arranging for or advertising child sex tours

(1) Any person who makes arrangements, whether wholly or partly in Hong Kong, for himself or another person to engage in any act in relation to a person under the age of 16 that will constitute an offence under any of the provisions specified in Schedule 2 if it is committed in Hong Kong, commits an offence and shall be liable on conviction on indictment to a fine of \$3,000,000 and to imprisonment for 10 years.

(2) Any person who publishes, distributes or publicly displays, or causes or permits the publication, distribution or public display of an advertisement that advertises any arrangements referred to in subsection (1) commits an offence and shall be liable on conviction on indictment to a fine of \$3,000,000 and to imprisonment of 10 years.

(3) For the purpose of subsection (2), "distribute" (祇) includes making any message or data readily available through any means of electronic transmission.

147AB. Defence

Where a person is charged with an offence under section 147AA(2), there shall be a defence for him if it is established by evidence that he had not himself seen the advertisement and did not know, nor did he have any cause to suspect, it to be an advertisement mentioned in that section."

3. Conviction for offence other than that charged

Section 149(1) is amended by repealing "the Schedule" where it twice appears and substituting "Schedule 1".

4. Subheading and section added

The following is added after section 1530 -

"Extra-territorial effect of certain sexual offences towards children

154A. Extra-territorial effect

(1) Where -

- (a) a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong;
- (b) a body corporate that is incorporated or registered in Hong Kong; or
- (c) a body of persons, whether corporate or unincorporate, that has a place of business in Hong Kong,

commits any act outside Hong Kong that would have constituted an

offence under any of the provisions specified in Schedule 2 had it been committed in Hong Kong, then the person or body shall be guilty of that offence if the act was committed in relation to a person -

- (i) under the age of 16 ; or
- (ii) in the case of an offence under section 123 or 140, under the age of 13.

(2) Where any person or body of persons whether corporate or unincorporate, commits any act outside Hong Kong that -

- (a) would have constituted an offence under any of the provisions specified in Schedule 2 had it been committed in Hong Kong; and
- (b) is committed in relation to a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong and is -
 - (i) under the age of 16 ; or
 - (ii) in the case of an offence under section 123 or 140, under the age of 13, then the person or body shall be guilty of that offence.

(3) It shall be a defence to a prosecution for an offence by virtue of subsection (1) or (2) that -

- (a) at the time of the act there existed between the defendant and the person in relation to whom the offence was allegedly committed a marriage that was valid, or recognized as valid, under the law of -
 - (i) the place where the marriage was solemnized; or
 - (ii) the place where the offence was

- allegedly committed; or
- (iii) the place of the defendant's residence or domicile;
and
- (b) when it was solemnized, the marriage was genuine.".

5. Other offences of which accused may be convicted

The Schedule is renumbered as Schedule 1.

6. Schedule 2 added

The following is added -

"SCHEDULE 2 [ss. 147AA & 154A]

Section	Description of offence
118	Rape
118A	Non-consensual buggery
118B	Assault with intent to commit buggery
118C	Homosexual buggery with or by man under 21
118D	Buggery with girl under 21
118F	Homosexual buggery committed otherwise than in private
118G	Procuring others to commit homosexual buggery
118H	Gross indecency with or by man under 21
118J	Gross indecency by man with man otherwise than in private
118K	Procuring gross indecency by man with man
119	Procurement by threats

120	Procurement by false pretences
121	Administering drugs to obtain or facilitate unlawful sexual act
122	Indecent assault
123	Intercourse with girl under 13
124	Intercourse with girl under 16
126	Abduction of unmarried girl under 16
130	Control over persons for purpose of unlawful sexual intercourse or prostitution
132	Procurement of girl under 21
134	Detention for intercourse or in vice establishment
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act
146	Indecent conduct towards child under 16".

Explanatory Memorandum

The object of this Bill is to amend the Crimes Ordinance (Cap. 200) to prohibit advertising child sex tours and to make provision for the extra-territorial effect of certain sexual offences towards children.

2. Clause 2 adds 2 sections to the Crimes Ordinance (Cap. 200) to create an offence of advertising child sex tours and to provide a defence for the offence.
3. Clause 4 adds a new part to the Crimes Ordinance (Cap. 200) to provide for the extra-territorial application of certain offences under that Ordinance if the offences are committed towards children.

Provisions of Crimes Ordinance which require extra-territorial effect

<u>Section</u>	<u>Offence</u>
S. 118	Rape*
S. 118A	Non-consensual buggery*
S. 118B	Assault with intent to commit buggery*
S. 118C	Homosexual buggery with or by man under 21*
S. 118D	Buggery with girl under 21*
S. 118F	Homosexual buggery committed otherwise than in private*
S. 118G	Procuring others to commit homosexual buggery*
S. 118H	Gross indecency with or by man under 21*
S. 118J	Gross indecency by man with man otherwise than in private*
S. 118K	Procuring gross indecency by man with man*
S. 119	Procurement by threats*
S. 120	Procurement by false pretences*
S. 121	Administering drugs to obtain or facilitate unlawful sexual act*
S. 122	Indecent assault*
S. 123	Intercourse with girl under 13
S. 124	Intercourse with girl under 16
S. 126	Abduction of unmarried girl under 16
S. 130	Control over persons for purpose of unlawful sexual intercourse or prostitution*
S. 132	Procurement of girl under 21*
S. 134	Detention for intercourse or in vice establishment*
S. 135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
S. 140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
S. 141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act*
S. 146	Indecent conduct towards child under 16

Remarks

* Only applies to victims under the age of 16