



張超雄立法會議員辦事處

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福利事務委員會
主席邵家臻議員

立法會CB(2)1935/17-18(02)號文件
LC Paper No. CB(2)1935/17-18(02)

邵主席：

要求盡快討論由張超雄議員擬議的
《侵害人身罪(修訂)條例草案》的法例修訂

本人來信事務委員會，要求本委員會盡快討論由本人提出的《侵害人身罪(修訂)條例草案》(下稱「條例草案」)的法例修訂。

本人提出的法例是把虐待或忽略長者等行為刑事化，並對違法者施加刑罰。本人於二零十八年三月二十日取得由法律草擬專員根據議事規規第 51 (2) 條簽發的證明書，確認條例草案符合議事規則第 50 條(法案的格式)的規定及香港法例的一般格式。

本人希望委員會主席能盡快討論《條例草案》的法例修訂。現向本委員會提交《條例草案》的摘要說明(只限英文版)和法案草擬本，懇請閣下將《條例草案》盡快進行討論。

如有任何垂詢，煩請隨時與本辦事處職員梁小姐聯絡(電話：2613 9200；電郵：christine@cheungchiuhung.org.hk)。

順祝
台安！

立法會議員

張超雄

張超雄 謹啟

二零一八年八月十三日

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Explanatory Notes
Offences against the Person (Amendment) Bill 2018

1. There is inadequate legal protection for the person with disabilities or an elderly person from abuses. Meanwhile, the Procedural Guidelines for Handling Elder Abuse Cases (Revised August 2006) issued by Social Welfare Department (SWD) implies Offences Against the Person Ordinance (Cap. 212) for dealing with physical abuse, including wounding or inflicting grievous bodily harm (section 19), assault occasioning actual bodily harm (section 39) and common assault (section 40). While the act of neglect is indicated as one of the elder abuse, the administration of incident caused by elder abuse is without a dedicated legal basis.
2. Given that children and juveniles are at present protected under a dedicated legislation of the Offences Against the Person Ordinance (Cap. 212) and the Protection of Children and Juveniles Ordinance (Cap. 213). There is no dedicated legislation has been introduced by the Government for protecting the person with disabilities or an elderly person from abuses.
3. In Singapore, it adopted causing death by rash or negligent act in section 304A of the Penal Code (Cap 224)¹ that deals with any rash or negligent act are not amounting to culpable homicide.
4. Under the context of residential care homes (RCH), the act of neglect is common situation happened nowadays. According to the Central Information System on Elder Abuse Case comprised by SWD, the department received 613 complaints in 2016, which embraced problem of neglect, physical abuses and multiple abuses². The Against Elderly Abuse of Hong Kong receives around 80 complaints average per month in recent years³. Under the current legislation framework without the concepts of neglect and abuses, the conviction rate on the operator of RCH of elder abuse case is low. Most case will be issued warning letters without prosecution action taken. On the other hand, the operator of the RCH keeps out of the affair and continues to run the business.

¹Singapore Statutes Online, source:

<http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=46c7903c-aac8-45ef-8346-c984f29b4646;page=0;query=DocId%3A%22025e7646-947b-462c-b557-60aa55dc7b42%22%20Status%3Apublishe d%20Depth%3A0;rec=0#pr304A-he->

²Statistics on newly reported elder abuse cases (January to December 2016), source:

https://www.swd.gov.hk/doc/family/sw/CISEAC_Chinese_%202016_clean.pdf

³ Source: <http://hk.apple.nextmedia.com/news/art/20150528/19163289>

5. In 2009, a staff member of a private residential care home for the elderly (RCHE) in Sheung Shui, was sentenced to six months' imprisonment and fine of \$3,000 for assaulting an elderly female resident and forcing her to eat faeces. The staff was charged with common assault.⁴
6. In 2010, the police received report of physical injury to an elderly. The elderly got injury of swollen lip. After investigation, it was claimed that the elderly drank a cup of hot water accidentally. The incident does not involve criminality.⁵
7. In 2015, there was allegedly letting elderly residents wait naked for showers in full view of neighbors in Tai Po. The Director of Social Welfare (DSW) refused its license renewal application, and move out all of the affects residents from the premises.
8. In 2016, a private residential care home for persons with disabilities (RCHDs) in Kwai Chung was revealed of the improper use of restricts on the residents. The residents were bundled in the toilet and bed for long period of time. However, no further investigation is taken from SWD.
9. In 2016, the bridge of rehabilitation company was found out 6 death incidents, including the suspect of improper care and lead to the cause of complications to death, and residents who died of suffocation during the meal. There were residents who committed suicide with belt. Besides, the co-finder of the nursing home was accused of sexually assaulting the female resident, who had a mental age of an eight-year-old⁶. The Department of Justice dropped charges against him after a thorough consideration of the law, evidence and the victim's medical reports. Later, the nursing home has had its Certificate of Exemption revoked by the SWD.
10. The above cases are only the tip of the iceberg. It is observable that there are various judgments among cases. Despite certain cases did aroused the public concern, most of the abuse cases have failed in justification, without a clear criterion. Hence, it is necessary to enhance the law enforcement, in order to address the problem of elder abuse and disability abuse.

⁴ Reference number: FLCC2670/09, source:
<http://hk.apple.nextmedia.com/news/art/20091230/13575956>

⁵ Reference number: 0314012 - 0314024, source:
<http://hk.apple.nextmedia.com/news/art/20110501/15213948>

⁶ Reference number: DCCC923/2014, source:
https://www.doj.gov.hk/chi/public/pdf/2016/pr20161027c1_Annex.pdf

11. The draft Bill references to ill-treatment or neglect by those in charge of child or young person in section 27 of the Offences Against the Person Ordinance (Cap. 212). It aims at criminalise certain conduct on the ill-treatment or neglect of a person with disabilities or an elderly person; and to impose appropriate penalty on the offender

12. Thus, the draft Bill seeks to form better protection mechanism to the person with disabilities or an elderly person, by way of a simple amendment is to expand the definition of elder abuse as an offence under section 27A.

19 July 2018

A BILL To

Amend the Offences against the Person Ordinance to criminalize the ill-treatment or neglect of a person with disabilities or an elderly person; and to impose a penalty on the offender.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Offences against the Person (Amendment) Ordinance 2018.

2. Offences against the Person Ordinance amended

The Offences against the Person Ordinance (Cap. 212) is amended as set out in section 3.

3. Sections 27A and 27B added

After section 27—

Add

"27A. Ill-treatment or neglect by those taking care of person with disabilities

- (1) If any person over the age of 16 years who has the duty of care of any person with disabilities wilfully assaults, ill-treats, neglects, abandons or exposes the person with disabilities or causes or procures the person with disabilities to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause the

person with disabilities unnecessary suffering or injury to his or her health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement), such person commits an offence and is liable—

- (a) on conviction on indictment—to imprisonment for 10 years; or
- (b) on summary conviction—to imprisonment for 3 years.

(2) A person may be convicted of an offence under this section, either on indictment or on summary conviction, despite the fact that the actual suffering or injury to health or the likelihood of such suffering or injury to health was obviated by the action of another person.

(3) A person may be convicted of an offence under this section, either on indictment or on summary conviction, despite the death of the person with disabilities in respect of whom the offence is committed.

(4) In this section—

person with disabilities (殘疾人士) means a person who suffers from one or more of the following disabilities—

- (a) total or partial loss of bodily or mental functions;
- (b) total or partial loss of a part of the body;
- (c) the malfunction, malformation or disfigurement of a part of the body;
- (d) a disorder, illness or disease that affects the thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour.

27B. Ill-treatment or neglect by those taking care of an elderly person

- (1) If any person over the age of 16 years who has the duty of care of any elderly person wilfully assaults, ill-treats, neglects, abandons or exposes the elderly person or causes or procures the elderly person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause the elderly person unnecessary suffering or injury to his or her health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement), such person commits an offence and is liable—
 - (a) on conviction on indictment—to imprisonment for 10 years; or
 - (b) on summary conviction—to imprisonment for 3 years.
- (2) A person may be convicted of an offence under this section, either on indictment or on summary conviction, despite the fact that the actual suffering or injury to health or the likelihood of such suffering or injury to health was obviated by the action of another person.
- (3) A person may be convicted of an offence under this section, either on indictment or by a court of summary jurisdiction, despite the death of the elderly person in respect of whom the offence is committed.
- (4) In this section—

elderly person (長者) means a person who has attained the age of 60 years.”

Explanatory Memorandum

The object of this Bill is to criminalize the ill-treatment or neglect of a person with disabilities or an elderly person, and to impose a penalty on the offender.

2. The Bill has a total of 3 clauses.
3. Clause 1 sets out the short title.
4. Clause 3 sets out the provision for the offence of ill-treating or neglecting a person with disabilities and the provision for the offence of ill-treating or neglecting an elderly person.

本條例草案 旨在

修訂《侵害人身罪條例》，把虐待或忽略殘疾人士或長者等行為刑事化；並對違法者施加刑罰。

由立法會制定。

1. 簡稱

本條例可引稱為《2018年侵害人身罪(修訂)條例》。

2. 修訂《侵害人身罪條例》

《侵害人身罪條例》(第212章)現予修訂，修訂方式列於第3條。

3. 加入第27A及27B條

在第27條之後——

加入

“27A. 對所照顧殘疾人士虐待或忽略

- (1) 任何超過16歲而對殘疾人士負有照顧責任的人，如故意襲擊、虐待、忽略、拋棄或遺棄該殘疾人士，或導致、促致該殘疾人士受襲擊、虐待、忽略、拋棄或遺棄，而該等行為相當可能導致該殘疾人士受到不必要的苦楚或健康損害(包括視力、聽覺的損害或喪失、肢體、身體器官的傷損殘缺，或精神錯亂)，即屬犯可循公訴程序審訊的罪行——
 - (a) 循公訴程序定罪後——可處監禁10年；或
 - (b) 循簡易程序定罪後——可處監禁3年。

- (2) 即使受到實際苦楚或健康損害的情況或可能性已因另一人的行動而消除，犯本條所訂罪行的人，仍可循公訴程序或簡易程序予以定罪。
- (3) 即使與本條所訂罪行有關的殘疾人士已經死亡，犯該罪的人，仍可循公訴程序或簡易程序予以定罪。
- (4) 在本條中——

殘疾人士 (person with disabilities)指患有以下一項或多於一項殘疾的人士——

- (a) 身體或心智方面的機能全部或局部喪失；
- (b) 全部或局部失去身體任何部分；
- (c) 身體的任何部分的機能失常、畸形或毀損；
- (d) 影響思想過程、對現實情況的認知、情緒或判斷、或引致行為紊亂的任何失調或疾病。

27B. 對所照顧長者虐待或忽略

- (1) 任何超過16歲而對長者負有照顧責任的人，如故意襲擊、虐待、忽略、拋棄或遺棄該長者，或導致、促致該長者受襲擊、虐待、忽略、拋棄或遺棄，其方式相當可能導致該長者受到不必要的苦楚或健康損害(包括視力、聽覺的損害或喪失、肢體、身體器官的傷損殘缺，或精神錯亂)，即屬犯可循公訴程序審訊的罪行——
 - (a) 循公訴程序定罪後——可處監禁10年；或
 - (b) 循簡易程序定罪後——可處監禁3年。
- (2) 即使受到實際苦楚或健康損害的情況或可能性已因另一人的行動而消除，犯本條所訂罪行的人，仍可循公訴程序或簡易程序予以定罪。
- (3) 即使與本條所訂罪行有關的長者已經死亡，犯該罪的人，仍可循公訴程序或簡易程序予以定罪。
- (4) 在本條中——

長者 (elderly person)指任何年滿 60 歲的人士。”。

摘要說明

本條例草案的目的，是把虐待或忽略殘疾人士或長者等行為刑事化，並對違法者施加適當的刑罰。

2. 本條例草案共有 3 條。
3. 草案第 1 條列出簡稱。
4. 草案第 3 條就虐待或忽略殘疾人士的罪行訂定條文，及就虐待或忽略長者的罪行訂定條文。