

立法會
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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 29 September 2021

Proposed amendments to the Crimes (Amendment) Bill 2021

Further to LC Paper No. CB(3) 979/20-21 issued on 13 September 2021, the President has given permission for the Secretary for Security to move amendments to the captioned Bill, subject to the Bill receiving Second Reading.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Thomas CHAN)
for Clerk to the Legislative Council

Encl.

Crimes (Amendment) Bill 2021

Committee Stage

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “non-consensual recording” (wherever appearing) and substituting “unlawful recording or observation”.
3	In the proposed Part XIIIAA, in the heading, by deleting “ Non-consensual Recording of Intimate Parts and Related Image Publication Offences ” and substituting “ Unlawful Recording or Observation of Intimate Parts, Related Image Publication Offences and Disposal Order ”.
3	<p>In the proposed section 159AA(1), by deleting the definition of <i>intimate image</i> and substituting—</p> <p>“<i>intimate image</i> (私密影像), in relation to an individual—</p> <ul style="list-style-type: none">(a) means an image showing—<ul style="list-style-type: none">(i) an intimate part of the individual; or(ii) the individual doing an intimate act; and(b) includes an image that has been altered to appear to show—<ul style="list-style-type: none">(i) an intimate part of the individual; or(ii) the individual doing an intimate act,regardless of whether any intimate part shown in the image described in subparagraph (i) or (ii) is in fact that of the individual; but(c) does not include an image so altered that no reasonable person would believe that it shows—<ul style="list-style-type: none">(i) an intimate part of the individual; or(ii) the individual doing an intimate act;”.

- 3 In the proposed section 159AAB(1)(a)(i), in the Chinese text, by deleting “被預期” and substituting “能被預期可能”.
- 3 In the proposed section 159AAB(1)(b), by deleting the semicolon and substituting “; and”.
- 3 By deleting the proposed section 159AAB(1)(c).
- 3 In the proposed section 159AAC, in the heading, by deleting “**Non-consensual recording**” and substituting “**Unlawful recording or observation**”.
- 3 By deleting the proposed section 159AAC(1)(b) and substituting—
 “(b) the person engages in the conduct described in paragraph (a)(i) or (ii)—
 (i) for a sexual purpose; or
 (ii) dishonestly; and”.
- 3 By deleting the proposed section 159AAC(1)(c) and substituting—
 “(c) the person disregards whether the individual referred to in paragraph (a)(i) or (ii) consents to the person’s conduct described in that paragraph.”.
- 3 By deleting the proposed section 159AAC(1)(d).
- 3 By deleting the proposed section 159AAC(3).
- 3 In the proposed section 159AAD(1)(b), by deleting the semicolon and substituting “; and”.
- 3 By deleting the proposed section 159AAD(1)(c).
- 3 In the proposed section 159AAD, by adding—
 “(2A) For subsection (1)(d)(i)—
 (a) the person is taken to know a specified offence has been committed if the person is aware of all the matters that must be established in order to prove the specified offence; and

- (b) the person is taken to be reckless as to whether a specified offence has been committed if the person is reckless as to the existence of all those matters.”.

3

By adding—

“Division 4—Disposal Order

159AAK. Interpretation

In this Division—

concerned person (相關人士), in relation to a disposal order, means a person described in section 159AAM(3)(a) or (b);

criminal proceedings (刑事法律程序), in relation to a specified offence—

(a) means proceedings, before any court or magistrate, in which a person is charged with the specified offence; and

(b) includes proceedings on appeal against conviction or sentencing (or both) before any court and proceedings under section 104 of the Magistrates Ordinance, in relation to the person for the specified offence;

disposal order (處置令) means an order made under section 159AAL(1);

Magistrates Ordinance (《裁判官條例》) means the Magistrates Ordinance (Cap. 227);

specified offence (指明罪行) means an offence, or an alleged offence, under section 159AAD or 159AAE;

subject person (處置令對象), in relation to a disposal order, means a person described in section 159AAM(2);

summons (傳票) means a summons issued under section 159AAM(2).

159AAL. Disposal order

- (1) A magistrate may, on application made in the name of the Secretary for Justice at any time during any criminal proceedings in relation to a specified offence

concerning an image and subject to subsections (3) and (4) and section 159AAM, order a person, whether in Hong Kong or elsewhere, to take reasonable steps to remove, delete or destroy, or to cause the removal, deletion or destruction of, the image within a period to be specified by the magistrate.

- (2) A magistrate may still deal with an application under subsection (1) and make the disposal order even if the criminal proceedings to which the application relates do not take place before a magistrate.
- (3) In an application made under subsection (1) for a disposal order—
 - (a) in relation to an image proposed to be made subject to the disposal order—
 - (i) the image must be identified;
 - (ii) it must be proved that the image is an intimate image of an individual; and
 - (iii) it must be proved that the image is a subject of the criminal proceedings; and
 - (b) in relation to a person proposed to be made subject to the disposal order—
 - (i) the person must be identified by stating the person's particulars;
 - (ii) it must be proved that the person has the means to control, or is in possession, of an image; and
 - (iii) it must be proved that the person is able to take the actions required under the terms proposed in the application to be specified in the disposal order.
- (4) A magistrate must not make a disposal order against a person in relation to an image unless the magistrate is satisfied that all matters that are required to be proved for the purposes of the application have been proved on a balance of probabilities.
- (5) After a disposal order is made, a magistrate may—
 - (a) on the magistrate's own motion;

- (b) on application made in the name of the Secretary for Justice; or
 - (c) on application by the subject person, or a concerned person,
review the disposal order, and affirm, suspend, vary, cancel or revoke the disposal order as the magistrate considers appropriate.
- (6) Subject to section 159AAM, a magistrate may determine an application under subsection (1) or review a disposal order under subsection (5) based on written materials without calling any witness.
- (7) The Secretary for Justice may appoint a person or class of persons to make an application under subsection (1) or (5)(b).
- (8) To avoid doubt—
- (a) the validity of a disposal order is not affected only by—
 - (i) the verdict of acquittal or quashing of a conviction on appeal, of the specified offence to which the disposal order relates;
 - (ii) proceedings under section 104 of the Magistrates Ordinance, in relation to the specified offence;
 - (iii) the discontinuation of the prosecution of the specified offence; or
 - (iv) the termination of the criminal proceedings; and
 - (b) the time limit of 14 clear days under section 104 of the Magistrates Ordinance does not apply in relation to a magistrate's power to review a disposal order under subsection (5).

159AAM. Procedures in relation to disposal order

- (1) An application under section 159AAL(1) or (5)—
 - (a) must be made in writing; and
 - (b) must be filed with a magistrate.
- (2) Subject to subsection (4), before making a disposal order against a person in relation to an image, or

reviewing a disposal order made against a person in relation to an image, a magistrate must issue a summons to the person to appear on the day specified in the summons to make representations.

(3) If a person, other than the subject person, claims that the person—

(a) has an interest in an image that is, or is proposed to be, made subject to a disposal order; or

(b) would be directly affected by the making or review of the disposal order,

the person may also appear on the day specified in the summons to make representations.

(4) If—

(a) a summons has not been served on the subject person named in the summons and the magistrate is satisfied that all reasonable efforts have been made to serve the summons on that person;

(b) the subject person named in the summons cannot for any reason be found;

(c) the subject person named in the summons has refused to accept the service of the summons; or

(d) the summons has been served on the subject person named in the summons but that person has not attended the hearing on the day specified in the summons,

the magistrate may still make or review the disposal order based on written materials without calling any witness and without a hearing.

159AAN. Service of summons and disposal order

(1) The service of a summons or disposal order in Hong Kong is to be made by a police officer.

(2) A summons must be served together with a copy of the application to which the summons relates.

(3) A summons or disposal order is to be regarded as having been duly served in Hong Kong on a person if—

- (a) it is served by hand on the person;
 - (b) it is left at the person's last known address; or
 - (c) it is sent by registered post addressed to the person at the person's last known address.
- (4) The service of a summons or disposal order out of the jurisdiction is permissible with the leave of a magistrate.
 - (5) The service of a summons or disposal order out of the jurisdiction is effected if the summons or disposal order is served on the person in accordance with the law of the jurisdiction in which the service is effected.
 - (6) If a magistrate grants leave to serve a summons or disposal order out of the jurisdiction, the magistrate may give directions in relation to the service, having regard to the procedures set out in Order 11, rule 5A or 6 of the Rules of the High Court (Cap. 4 sub. leg. A), as if the procedures were applicable, with necessary modifications, to the service.
 - (7) If the service of a summons or disposal order has been effected, the proof of service must be filed with a magistrate.
 - (8) In this section—

proof of service (送達證明), in relation to service of any summons or disposal order, means—

- (a) for service in Hong Kong—statutory declaration as to the service made by the police officer who effected the service; or
- (b) for service out of the jurisdiction—applicable proof of service in accordance with the applicable law of the jurisdiction in which the service is effected.

159AAO. Offence relating to disposal order

- (1) A person commits an offence if the person—
 - (a) has been made subject to a disposal order;
 - (b) has been served with the disposal order; and
 - (c) fails to comply with the disposal order.

- (2) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine at level 6 and to imprisonment for 1 year.
- (3) It is a defence for a person charged with an offence under subsection (1) to establish that the person had a reasonable excuse for not complying with the disposal order.
- (4) The person is taken to have established that the person had reasonable excuse referred to in subsection (3) if—
 - (a) there is sufficient evidence to raise an issue with respect to the reasonable excuse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.