

立法會
Legislative Council

LC Paper No. LS58/20-21

**Paper for the House Committee Meeting
on 26 March 2021**

**Legal Service Division Report on
Crimes (Amendment) Bill 2021**

I. SUMMARY

- 1. The Bill**

The main object of the Bill is to amend the Crimes Ordinance (Cap. 200) to:

 - (a) provide for the following new offences:
 - (i) voyeurism,
 - (ii) non-consensual recording of intimate parts,
 - (iii) publication of images originating from voyeurism or non-consensual recording of intimate parts,
 - (iv) publication or threatened publication of intimate images without consent; and
 - (b) provide for related matters.

- 2. Public Consultation**

The Administration accepted the Law Reform Commission's recommendations on the introduction of new offences on voyeurism, non-consensual recording of intimate parts etc, and launched a three-month public consultation in July 2020. Submissions were received from major stakeholders, groups/organizations which are concerned with the subject matter, as well as individual members of the public. The majority of the submissions received expressed strong support for the legislative proposals.

- 3. Consultation with LegCo Panel**

The Panel on Security was consulted on the legislative proposals on 15 January 2021. Members were generally supportive of the legislative proposals. However, some members expressed concerns on a number of issues.

- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce new criminal offences, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 24 March 2021. Members may refer to the Legislative Council ("LegCo") Brief (File reference: SBCR 6/2801/73) issued by the Security Bureau on 17 March 2021 for further details.

Object of the Bill

2. The main object of the Bill is to amend the Crimes Ordinance (Cap. 200) to:

- (a) provide for the following new offences:
 - (i) voyeurism,
 - (ii) non-consensual recording of intimate parts,
 - (iii) publication of images originating from voyeurism or non-consensual recording of intimate parts,
 - (iv) publication or threatened publication of intimate images without consent; and
- (b) provide for related matters.

Background

3. At present, there is no specific offence against voyeurism and non-consensual recording of intimate parts (such as upskirt photography). For prosecution against such acts, offences such as "loitering" under section 160 of Cap. 200, "disorder in public places" under section 17B of the Public Order Ordinance (Cap. 245), and "access to computer with criminal or dishonest intent" under section 161 of Cap. 200 have been relied on. However, there are limitations on the application of these offences. For instance, if the act involved only the use of the suspect's own computer,¹ or if the act occurred in a private place,² those offences may not be applicable for prosecution against such acts. After taking into account the recommendations of the Law Reform Commission³ in 2019 and the views received during a subsequent public consultation in 2020, the Administration has introduced the Bill into LegCo which seeks to provide for relevant new offences to address the issues stated above.

¹ The Court of Final Appeal held in a case that the offence of "obtaining access to computer with a view to dishonest gain for himself or another" under section 161(1)(c) of Cap. 200 does not extend to the use of the offender's own computer (see *Secretary for Justice v Cheng Ka Yee & Others* [2019] HKCFA 9).

² Offences such as "loitering" or "disorder in public places" are applicable to acts that occur in public places only.

³ Members may refer to the Law Reform Commission's Report on Voyeurism and Non-consensual Upskirt-Photography published in April 2019 for further details.

Provisions of the Bill

Proposed new offence of voyeurism

4. It is proposed in the Bill (new section 159AAB of Cap. 200) that it would be an offence of voyeurism for a person, without consent and with disregard as to whether consent is given, to surreptitiously observe (with or without the aid of equipment) or record:

- (a) an individual in a place in which any individual can reasonably be expected to be nude, to reveal an intimate part (i.e. the individual's genitals, buttocks, anal region or breasts (whether exposed or only covered with underwear); or the individual's underwear covering genitals, buttocks, anal region or breasts), or to be doing an intimate act (i.e. using the toilet in a manner that is likely to reveal an intimate part or doing a sexual act that is not ordinarily done in public),
- (b) an intimate part of an individual, or an individual doing an intimate act, for the purpose of observing or recording an intimate part or an intimate act, of any individual, or
- (c) an individual for a sexual purpose (including the stimulation or satisfaction of the sexual desire of the person or any other person).

5. Under the Bill, it would also be an offence if a person installs or operates equipment, or constructs or adapts a structure or a part of a structure, for the purpose of enabling the person or any other person to commit the proposed offence of voyeurism.

Proposed new offence of non-consensual recording of intimate parts

6. It is proposed in the Bill (new section 159AAC of Cap. 200) that a person would commit an offence if, (i) for a sexual purpose, or (ii) for the purpose of obtaining dishonest gain⁴ for the person or for any other person, without an individual's consent and with disregard as to whether consent is given:

- (a) the person records an intimate part of an individual in circumstances in which the intimate part would not otherwise be visible; or
- (b) the person, with intent to observe or record an intimate part of an individual, (i) operates equipment for the purpose of observing or recording an intimate part of the individual from beneath the clothing of the individual, or (ii) operates equipment in an unreasonable manner for the purpose of observing or recording an intimate part of the individual through an opening or a gap in the

⁴ It is proposed that "gain" would include (a) a gain in money or property; (b) a temporary or permanent gain; (c) a gain by keeping what one has; and (d) a gain by getting what one has not.

outer clothing of the individual (including the act which is commonly known as "down-blousing"), in circumstances in which the intimate part would not otherwise be visible.

Proposed new offence of non-consensual publication of images

7. It is proposed in the Bill (new section 159AAD of Cap. 200) that it would be an offence for a person to publish, without consent and with disregard as to whether the individual consents to the publication, images that originate from the commission of the proposed offence of voyeurism or non-consensual recording of intimate parts as stated in paragraphs 4 and 6 above.

Proposed new offence of publication or threatened publication of intimate images without consent

8. It is proposed in the Bill (new section 159AAE of Cap. 200) that it would be an offence for a person to publish or threaten to publish an intimate image of an individual (i.e. an image showing an intimate part of the individual or the individual doing an intimate act) with intent to cause humiliation, alarm or distress to the individual (or knowing or being reckless as to whether it will or is likely to cause such humiliation, alarm or distress), without consent and with disregard as to whether the individual consents to the publication or threatened publication of the intimate image.

Proposed maximum penalties of the new offences

9. A person who commits any of the proposed new offences as stated in paragraphs 4 to 8 above would be liable on conviction on indictment to imprisonment for five years.

Proposed defences and provision on consent

10. It is proposed under the Bill that it would be a defence for a person charged with any of the above proposed new offences in the Bill (except if the offences are committed for a sexual purpose) to establish that the person had lawful authority or reasonable excuse for the contravention. In cases where the individual whose intimate act, intimate part or intimate image is the subject of an offence ("subject individual") is aged under 16 or is mentally incapacitated, it is proposed that it would be a defence if a person charged could prove that he or she honestly believed that a consent was given by the subject individual, and he or she did not know and had no reason to suspect that the subject individual was aged under 16 or was mentally incapacitated.

11. Under the Bill, it is proposed that if at the time the relevant conduct (e.g. recording of an intimate part) takes place, the subject individual is aged under 16 or is mentally incapacitated, he or she cannot give a consent that would prevent a person's conduct from becoming an offence as stated in paragraphs 4 to 8 above.

Commencement

12. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

13. According to paragraphs 5 and 27 of the LegCo Brief, the Administration accepted the Law Reform Commission's recommendations on the introduction of proposed new offences and launched a three-month public consultation in July 2020. Submissions were received from major stakeholders such as the Law Society of Hong Kong, the Hong Kong Bar Association, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, other groups/organizations which are concerned with the subject matter, as well as individual members of the public. According to the Administration, the majority of the submissions received expressed strong support for the legislative proposals and some of them have offered views on specific proposals.⁵

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Security, the Panel was consulted on the legislative proposals on 15 January 2021. Members were generally supportive of the legislative proposals. However, some members considered that "down-blousing" should be covered in the proposed offence of non-consensual recording of intimate parts, and threat to distribute non-consensual intimate images should also constitute an offence. Such views have been taken into account by the Administration in drafting the Bill.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce new criminal offences, Members may consider forming a Bills Committee to study the Bill in detail.

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⁵ Members may refer to the paper prepared by the Security Bureau for discussion at the meeting of the Panel on Security on 15 January 2021 (LC Paper No. CB(2)580/20-21(04)) for further details on the submissions received.