

Thursday, July 12, 1990

### **Repeal of Loitering Provision Recommended**

The Law Reform Commission has recommended the removal of a sub-section of the Crimes Ordinance commonly used to prosecute people for loitering if a satisfactory explanation for a person's presence is not given.

The Commission, however, proposes that two other sub-sections relating to loitering offences – one on wilful obstruction to others and the other on causing a person concern for his safety – be retained.

The recommendations are contained in a report on the law of loitering published by the Law Reform Commission today (Thursday).

The report is the result of more than two years' work by the Commission, and a sub-committee chaired by executive and legislative councillor Mrs Rosanna Tam to examine the application of the three sub-sections.

The report explains that loitering, in the legal context, is not to be interpreted as merely standing or waiting in a public place such as a street or stairway, but rather loitering in such places in such a way as to reasonably indicate to an observer that the loiterer is idling for some unlawful purpose.

There are three sub-sections under section 160 of the Crimes Ordinance that deal with loitering offences.

Sub-section (1) makes it an offence if a loiterer fails to give a satisfactory explanation at the time for his presence there.

Sub-section (2) says that it is an offence for a loiterer in any way to wilfully obstruct any other person.

Under sub-section (3), a loiterer commits an offence if he causes any person reasonably to be concerned for his safety.

The Commission proposes that sub-section (1) be repealed

while sub-sections (2) and (3) should be retained. The Commission considered that the latter two sub-sections were operating satisfactorily and pointed out that there had been no criticism of those provisions.

Convictions under sub-section (1) – loitering without satisfactory explanation – form a large majority of cases.

In making its recommendations, the Commission criticised the operation of sub-section (1) for the possibility of abuse by the police since police testimony alone was habitually used to convict.

In addition, the requirement for a suspect to provide a satisfactory account of himself and a satisfactory explanation for his presence at the scene of the alleged crime was felt to raise questions regarding an accused's right to silence, although this requirement was originally inserted for the benefit of the suspect.

Under the common law doctrine, a person accused of a crime could refuse to answer any question put to him by a police officer or any other person. The Commission felt that the requirement imposed on a suspect by the law to provide an explanation ran counter to the general rule on a right to silence.

The Commission also considered that the powers given to the police under section 54 of the Police Force Ordinance provide an adequate substitute for section 160(1) of the Crimes Ordinance without suffering from the drawbacks.

Section 54 of the Police Force Ordinance empowers the police to stop and search and if necessary arrest and detain any person found acting in a suspicious manner or whom an officer suspects of having committed or of being about to commit any offence.

The Commission emphasised that the police should have such powers and that such powers already existed in the Police Force Ordinance.

Unlike section 160(1) of the Crimes Ordinance, section 54 of the Police Force Ordinance does not lead to a prosecution, but merely empowers

the police to arrest and detain a person for further inquiries where necessary.