THE LAW REFORM COMMISSION OF HONG KONG

REPORT

LOITERING

[Topic 23]

We, the following members of the Law Reform Commission of Hong Kong, present our report on Loitering.

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Chapter 1

Summary of work

Terms of reference

1.1 On the 17 of November 1987, under the powers granted by the Governor in Council, the Chief Justice and the Attorney General referred the following questions to the Law Reform Commission: -

> *"Whether the law relating to the offences of loitering contained in section 160 of the Crimes Ordinance should be amended and, if so, what changes should be made."*

Sub-committee membership

1.2 At its Meeting on 15 December 1987, the Commission appointed a sub-committee with the Hon Mrs Rosanna Tam as Chairman to research, consider and advise on the present state of the law and to make proposals to the Law Reform Commission for reform. The membership of the sub-committee was:

Hon Mrs Rosanna Tam JP (Chairman)	General Secretary Hong Kong Federation of Youth Groups Law Reform Commission Member
Hon Mr Justice Hooper (Vice-Chairman)	Judge of High Court
Mr A F H Crawshaw	Principal Magistrate South Kowloon Magistracy
Mr Philip Dykes	Deputy Principle Crown Counsel Attorney General's Chambers
Mr Fred Lee	Solicitor Lee & Chow
Mr Peter Lee Lam-chuen (up to December 1988)	Assistant Commissioner Royal Hong Kong Police
Mrs Katina Levy	Court Liaison Officer Law Society Legal Advice and Duty Lawyer Schemes

Mr Albert S B Li, JP	School Principal District Board Member District Fight Crime Committee Chairman
Mr Derry Wong	Barrister
Mr Wong Tsan-kwong	Assistant Commissioner Royal Hong Kong Police
Mr A K Maxwell (Secretary)	Senior Crown Counsel Attorney General's Chambers
Mr David Fitzpatrick (Secretary)	Senior Crown Counsel Attorney General's Chambers

Method of working

1.3 The sub-committee saw it as its task to seek the views of interested persons and organisations. To this end it prepared a comprehensive course of consultation consisting of writing to interested parties locally for their views and to certain other jurisdictions overseas, undertaking a four-month study of loitering cases in four selected magistracies, holding briefings for District Board and District Fight Crime Committee members, and arranging for a telephone survey of members of public which was carried out with the assistance of the City and New Territories Administration (CNTA) from 8 – 12 August 1988. A list of those responding to the sub-committee is at Annexure 3 while a report on the CNTA's survey is at Annexure 1.

1.4 Twenty meetings of the sub-committee were held to study the subject and the Commission discussed the sub-committee's report at its 74th, 75th and 77th meetings in February, March and May 1990.

Chapter 2

The law

2.1 The Commission was charged with reviewing the loitering laws in section 160 of the Crimes Ordinance. There had been criticism of these laws, and in particular section 160(1) under which most prosecutions were (and are) brought, both in professional journals and in newspaper articles.[1] The criticisms were, among others, that the law infringed the right to silence, that it was capable of abuse by the police, that its requirement for an explanation on the spot disadvantaged persons with a low IQ or who were mentally handicapped, that it was anomalous in criminalising behaviour falling short of an attempt, and that its retention would go against the trend in other jurisdictions of abolishing such offences (at least in name since other offences might be enacted in place thereof, as in the case of the English Criminal Attempts Act, 1981). There was also discussion of Hong Kong's loitering law by the United Nations Human Rights Committee in Geneva in 1988 where the question of the law's compatibility with the International Covenant on Civil and Political Rights was canvassed. As a first step to analysing the strengths and weaknesses of the present law, it is necessary to outline the law and its background.

The present loitering enactment and its predecessor

2.2 Section 160 of the Crimes Ordinance (Cap. 200) creates three offences: -

> *"160. (1) Any person who loiters in a public place or in the common parts of any building shall, unless he gives a satisfactory account of himself and a satisfactory explanation for his presence there, be guilty of an offence and shall be liable on conviction to a fine of $2,000 and to imprisonment for 6 months.*
>
> *(2) Any person who loiters in a public place or in the common parts of any building and in any way wilfully obstructs any person using that place or the common parts of that building, shall be guilty of an offence and shall be liable on conviction to imprisonment for 6 months.*

[1] As is pointed out in Chapter 5 of this Report the number of prosecutions under subsections (2) and (3) of section 160 has been minimal over the years. The term "loitering law" as used herein therefore usually refers to section 160 (1) of the Crimes Ordinance, except where the context shows a broader meaning of a law prohibiting with criminal sanction behaviour falling short of a completed crime or an attempt.

(3) If any person loiters in a public place or in the common parts of any building and his presence there, either alone or with others, causes any person reasonably to be concerned for his safety or well-being, he shall be guilty of an offence and shall be liable on conviction to imprisonment for 2 years.

(4) In this section 'common parts', in relation to a building, means -

(a) any entrance hall, lobby, passageway, corridor, staircase, landing, rooftop, lift or escalator;

(b) any cellar, toilet, water closet, wash house, bath-house or kitchen which is in common use by the occupiers of the building;

(c) any compound, garage, carpark, car port or lane."

The passage of the enactment and its justification

2.3 The present three offences in section 160, commonly referred to as the loitering offences, were introduced in 1979. This, however, is only part of the picture. Almost since the first days of the Territory there was in effect a "loitering law", broadly defined as a crime prevention measure which prohibited with a criminal sanction suspicious behaviour falling short of a criminal attempt, where it could reasonably be inferred that the person was preparing to commit a crime. England had a loitering law, as such, in section 4 of the Vagrancy Act 1824 and well before that date, until its repeal in 1981.

2.4 Section 160 was introduced into the Crimes Ordinance in 1979. The Bill arose from a review of gang activity carried out by the then Attorney General, the Commissioner of Police and the Secretary for Security. This undertaking had been carried out with the help and advice of the Fight Crime Committee.

2.5 The then Attorney General expressed the Government's view that, while triads may have declined, they had been replaced by a problem no less serious, of gangs claiming triad origin dominating streets and housing estates. The existing powers under the Societies Ordinance (Cap. 151) were thought inadequate. The Police Force also found it difficult to cope adequately with groups of thugs or bullies behaving in an offensive or menacing way, without actual physical aggression. What the Bill did was to introduce an enlarged loitering law (new section 160(1)), while sub-sections (2) and (3) introduced entirely new types of loitering aimed at thugs and bullies in public places or on estates.

2.6 The Bill was amended after consultation with Unofficial Members, consultation which the then Attorney General described as "intense" and involved "a frank exchange of views". It was recognised by the then Attorney General and the Unofficial Members that section 160(1) was an enlargement

of the then current loitering provision in section 26 of the Summary Offences Ordinance (Cap. 228).

The law immediately prior to section 160(1)

2.7 Section 26 of the Summary Offences Ordinance (Cap. 228) had been limited to loitering between sunset and 6 a.m. (unlike section 160 of the Crimes Ordinance which contains no time restriction). It required the defendant to give a satisfactory account of himself. In the new section 160(1) it was hoped that by requiring a satisfactory explanation to be given to a police officer, rather than later at court, the needless arrest of innocent individuals who had an excuse for suspicious conduct could be avoided. In other words, the provision was inserted for the benefit of the potential defendant. It is clear from Members' speeches in the Legislative Council that they recognised the dangers inherent in a crime which gave considerable powers to the Police Force. The then Attorney General stressed the monitoring role of the UMELCO Group, who oversaw the work of the Complaints Against Police Office (CAPO). Loitering cases would be considered by an experienced police officer, and the Commissioner and his senior officers were fully alert to the risks of abuse.

2.8 Section 26 of the Summary Offences Ordinance (Cap. 228) had read:

> *"Any person who -*
>
> *(a) is found between sunset and 6 am loitering in any highway, yard or other place, and who cannot give a satisfactory account of himself;*
>
> *(b) is found at any time in or upon any dwelling-house, warehouse, stable, garage, outhouse, private enclosure or garden for any unlawful purpose; or*
>
> *(c) being a suspected person or reputed thief is found at any time loitering in, at or upon, or frequenting, any river, navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any public place or place of public resort, or any street or highway, with intent to commit felony:*
>
> *Provided that in proving intent to commit felony under this paragraph it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if, from the circumstances of the case and from his known character as proved to the magistrate before whom he is brought, it appears to such magistrate that his purpose was to commit felony,*

shall be liable to a fine of one thousand dollars or imprisonment for three months."

2.9 It appears from reported cases that section 26 was used for much the same activity as now falls to be dealt with by section 160(1). Section 26(a) obviously shared a similar lineage to the present section 160(1) of the Crimes Ordinance. Section 26(c) was a wide ranging offence and was very similar to England's former "suspected person" offence. It covered both the case of a "suspected person" and a "reputed thief". This offence was not without difficulties of proof. While there is an obvious overlap in function between the two provisions it may be that section 160(1) is of wider application and his a built-in investigation device.

Chapter 3

Interpretation of Hong Kong's loitering laws

Comments on the present enactment

3.1 This Chapter contains a description of the present interpretation of Hong Kong's loitering law and its detailed application "on the street", both of which are essential to understanding the problems associated with section 160(1).

3.2 The three subsections which together form the loitering laws create three different offences. All three offences appear to require proof of the following fact elements: "any person who loiters in a public place or the common parts of a building". Subsection (1) requires further proof in the loiterer of a lack, when called upon, of a satisfactory account of himself and a satisfactory explanation of his presence. It is a general crime prevention offence aimed at suspicious unexplained conduct. Subsection (2) requires the additional proof of wilful obstruction of any person using the public place or common parts of the building. Subsection (3) requires the loiterer's presence, either alone or with others, to cause any person to be reasonably concerned for his safety or well being. The two latter subsections seem appropriate to deal with forms of intimidation.

Meaning of "public place"

3.3 The interpretation of the words "public place or common parts of any buildings" are not the subject of any great difficulty. "Public place" is to be given its ordinary meaning, i.e. it is a place which is accessible to the public, even if it is privately owned. Thus a shop has been found to be a public place.[2] "Public place" is also defined in the Interpretation and General Clauses Ordinance (Cap 1) of the Laws of Hong Kong.[3] "Common parts" in relation to a building, are comprehensively described in section 160(4).

The leading case – SHAM Chuen

3.4 Subsection (1) of section 160 of the Crimes Ordinance (Cap. 200) has been the subject of numerous appellate decisions since its

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2 See NG Chun-yip & others v The Queen (1985) HKLR 427.

3 "Public place" is defined in (Cap 1) as follow:
"(a) any public street or pier, or any public garden; and
(b) any theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment or to which the public have or are permitted to have access."

introduction. The watershed case is Attorney General v. SHAM Chuen (Magistracy Appeal number 722 of 1985) (herein referred to as SHAM Chuen"). There, the Attorney General obtained leave from, and successfully appealed to the Judicial Committee of the Privy Council, which overturned the Hong Kong Court of Appeal decision in a judgement dated 16 June 1986.

3.5 Prior thereto, in R v. MA Kui (Magistracy Appeal No 244 of 1985) difficulties with section 160(1) came to light. The learned Judge reviewed the authorities and observed that the loitering laws granted extraordinary powers to the police: in particular, section 160(1), as drafted, was draconian. This consideration lead him to construe the provision very strictly. The accused had been seen tampering with letter boxes. The police questioned him and he replied that he was looking for a prostitute. He was then asked why he was tampering with the letter boxes and, in answer, denied that he had been. He was then warned to give a satisfactory explanation for tampering with the letterboxes, and replied "Ah Sir, give me a chance". He was arrested for loitering. Penlington J (as he then was) took the view that the questions relating to the tampering were tantamount to accusing him of attempted theft. The appellant was entitled not to answer. He could exercise his legal privilege to refrain from answering. The learned Judge held that a person who is accused of a crime and requested to give a satisfactory explanation is justified in remaining silent, and his silence should not then be put forward in support of a charge of loitering.

3.6 The advice of their Lordships in SHAM Chuen's case explains how section 160(1) is interpreted and how it should be employed. Comments were also made suggesting the interpretation of the other loitering crimes in subsections (2) and (3) of section 160.

Meaning of "loitering"

3.7 In SHAM Chuen their Lordships interpreted "loitering" in section 160. The acceptable dictionary meaning of the word is simply "lingering". The construction to be put on the word "loitering" however differed in each of the subsections. Subsections (2) and (3) are each concerned with loitering of a particular character.[4] In their Lordships' opinion subsection (1) is also concerned with loitering of a particular character, namely loitering which calls for a satisfactory account of the loiterer and a satisfactory explanation of his presence. Obviously a person may loiter for a variety of reasons, some entirely innocent and others not so. It would be unreasonable to construe the subsection to subject to questioning persons loitering for plainly inoffensive purposes, such as a tourist admiring the architecture. The Privy Council accordingly held that such persons are not "loitering". The putting of questions is intrusive, and the legislature cannot be taken to have contemplated that this would be done in the absence of some circumstances which make it appropriate in the interests of public order. So their Lordships

[4] The first being loitering which causes an obstruction and the second being loitering which causes reasonable concern to a person for his safety or well being.

concluded that the loitering aimed at by this sub-section is loitering "in circumstances that reasonably suggest that its purpose is other than innocent".

3.8 One distinguishing feature of section 160(1) is that it does not require any factual elements to be proved by victims. Thus while section 160(1) has great potential for use by the police it also has considerable potential for abuse. The position regarding the remaining subsections (2) and (3) is that section 160(3) probably requires proof of factual elements by a victim (causing a person to be concerned for his safety or well-being) while section 160(2) does not necessarily require proof from a victim (wilful obstruction of any person) in that a police witness could testify as to that element. As will be seen from the statistical section of this Report, however, very few prosecutions have been brought under subsections (2) or (3). The "victimless" aspect of section 160(1) is therefore a feature which distinguishes it from most other crimes.

Detailed application of the law – (i) When does it apply?

3.9 From the point of view of a police officer the loitering laws are amongst the most important tools used in crime prevention. The offence created by section 160(1) is extensively employed by both detectives and police officers on beat patrol on the street or in housing estates. Its significance springs from the fact that it allows the individual officer to act on his own observations of suspicious conduct, rather than on the complaint of a member of the public. It enables the officer to make enquiries of a suspected loiterer under a form of statutory compulsion. It empowers him to arrest if the answers to his enquiries fail to allay his suspicions. Section 160(1) is a crime which anticipates and makes punishable preparatory criminal activity. It is a preventative device, which will be at the forefront of the mind of every patrolling officer.

Circumstances in which the loitering offence arises

3.10 The powers granted by section 160(1) are commonly used to investigate persons in the following typical sets of suspicious circumstances:

(a) touching the pockets or handbags of persons in crowded conditions;

(b) peeping into or trying the doors or gates of buildings;

(c) looking into vehicles and trying with their door handles;

(d) following females into buildings;

(e) pressing their bodies against women in crowded situations.[5]

3.11 This is not an exclusive set of circumstances, merely the cases that are most often encountered. We shall refer to them hereafter as the "loitering circumstances". One act of the type described above will not normally cause the police officer to become suspicious. If an act occurs once only, common sense allows for a possible misinterpretation of actions, e.g. an accident or reasonable justification. Reasonable suspicion can spring from a pattern of activity which suggests other than an innocent purpose. The law does not prescribe a period of observation, though the longer suspicious conduct is observed the less likely that it has an innocent explanation.

3.12 The "loitering circumstances" set out above give rise to suspicion that the loiterer is about to -

(a) steal or pick a pocket;

(b) burgle the building or rob someone inside the building;

(c) steal from the car or take the vehicle without the owner's consent;

(d) rob a vulnerable victim;

(e) snatch jewellery or valuables or commit an indecent assault on a woman.

Detailed application of the law – (ii) Putting questions to a potential defendant

3.13 Section 160(1) impliedly authorises the putting of questions to the loiterer. There is no such authorisation in sub-sections (2) and (3). What should be asked? There is no set formula of questions. The guide to the investigator is found in the reported decisions.

3.14 To be fair to the loiterer the questions should be designed to enable the person to give a satisfactory account of himself and a satisfactory explanation of his presence.[6] The words "account of himself" appear to mean details of the loiterer's identity and an explanation of what the suspect had been doing and why.[7] Taken together with an explanation for his presence this authorises the investigator (almost invariably a police officer) to ask the suspect any questions which are directed at dispelling the investigator's suspicions.

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5 These "loitering circumstances" formed the basis for question 10 of the Telephone Survey, the survey of members of the public, referred to below.

6 See Attorney General v SHAM Chuen [1986] 1 AC 887, Privy Council decision.

7 See Attorney General v SHAM Chuen [1986] HKLR 365, Court of Appeal decision.

Caution

3.15 The police should not impose the normal type of caution before asking for an account from the loiterer.[8] (The caution is the warning which usually precedes police enquiries of a suspected person, that he is not obliged to say anything, but that what he does say will be recorded and may be used in evidence). What the prosecution must prove is that the loiterer was given an opportunity to explain. Whether the questions of the police officer are sufficient to amount to a genuine opportunity for the suspect to give his account and explanation is a question of fact[9] (e.g. the loiterer may not understand the dialect used by the officer, or he may be deaf. In either case there would be insufficient opportunity to explain).

3.16 If the suspect remains silent when asked for a satisfactory account of himself and a satisfactory explanation of his presence, the investigator may warn him that if he does not answer he may be arrested for loitering. This warning is not obligatory,[10] but is recommended if it is to be proved that the suspect had an opportunity to explain.

3.17 To be satisfactory the account the loiterer gives of himself and the reason for his presence must be credible and consistent with an innocent purpose.[11] If so, then no further action is required from the officer, who in the normal course of events will simply make a notebook entry. The officer may need time to verify a suspect's explanation. This is often done where people seen lingering in buildings say that they are waiting for friends. If the investigator is not satisfied with the explanation given to his questions, and he feels that he has given the loiterer a genuine opportunity to answer he is entitled to arrest the loiterer. It will then be for the court to decide whether the answers given to the investigator were credible and consistent with an innocent purpose.

3.18 If the suspect ventures an answer that he is about to commit a crime, such as to pick a pocket, he will be arrested. Police officers often claim the suspect asked for another chance, impliedly admitting criminal intent. Again this is sufficient for an arrest. If a man is approached and runs away, that gives rise to even greater suspicion. If he is caught he must still be asked the questions which could supply the satisfactory account and explanation required by law.

3.19 If the police officer decides to arrest the suspect for loitering he will tell him that he is under arrest. He must be told for what he has been arrested, and a verbal caution is administered. The suspect is now in custody. At some stage he will be searched. This may reveal further evidence relevant to loitering or lead to additional charges. The suspect may be carrying a concealed weapon, a picklock, a large set of car keys etc. Any further enquiries made about the loitering, or any other suspected criminal

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8 See NG Yuk-sin v. R. Criminal Appeal 997 of 1979.

9 See Attorney General v. TSE Kam-pui (1980) HKLR 338.

10 See Attorney General v. SHAM Chuen, Privy Council decision.

11 Attorney General v. SHAM Chuen, Privy Council decision.

behaviour, will be made after a further caution, additional to that imposed at arrest. At some stage the police investigation will be reviewed by a senior officer who must decide whether there is enough evidence to merit charging the suspect, otherwise he will be released.[12]

3.20 A man arrested for a loitering offence under section 160 will be prosecuted in the Magistracy. In a prosecution under section 160(1), if the court finds the fact elements proved beyond reasonable doubt it will convict the accused even if he gives evidence and offers a credible explanation in court that is consistent will an innocent purpose.[13] The guilty mind that the Crown must prove is that the accused was acting consciously when he loitered and failed to give a satisfactory explanation. Thus a man who is acting suspiciously, who panics when questioned by the police and tells lies, giving an explanation which is inconsistent with an innocent purpose, is guilty, even though the true reason for his presence and behaviour may be quite innocent.

Sections 160(2) and (3)

3.21 The offences in sub-sections (2) and (3) of section 160 are much less frequently employed. They have not been the subject of appeal decisions examining their interpretation.

12 Police Headquarters Order No. 4 of 1987, Part One.

13 See Attorney General v. CHAN Chin-hung (1980) HKLR 737.

Chapter 4

Criticisms of the law

4.1 Having outlined the law and the complications associated with it, it is necessary now to ascertain what, if anything is wrong with the existing law. That question does not admit of any simple answer. Inevitably the question attracts differing and conflicting views because on many aspects the answers reflect value judgments. It is clear that the starting point is to consider the purposes of the existing law and to try to identify whether the law is effective in achieving its purposes.

4.2 This report encompasses both an examination of empirical data, such as the results of public consultation and statistical analysis, and conceptual argument since there was a feeling in some quarters that the law was an anachronism and a remnant of a society now changed.

4.3 This chapter looks at the conceptual aspects of the law, meaning its purported purpose, the nature of the criticisms of the law and what alternatives might be available. The next chapter looks at the steps taken to ascertain public opinion.

Historical background

4.4 The speech made by the then Attorney General in the Legislative Council in 1979 when the present law was introduced clearly indicated that the law was being widened because of concern over gang activity. Gang activity was not confined to bullies acting in concert: an individual acting on his own was seen to pose a threat to society not only because of his association with others, but also because of others' perception of his association with a gang or triad group. Section 160 is wide enough to deal with such an individual.

4.5 Subsections (2) and (3) of section 160 were new provisions designed to combat gang-associated problems. Subsection (1), however, or its predecessors, has been on the statute book since the beginning of Hong Kong's modern history. It has been argued that its UK origins are the English Vagrancy Acts.[14] On the other hand, it has been suggested that the subsection can be traced back to either section 7 of the Metropolitan Police Act 1829 or section 64 of the City of London Police Act 1839.[15]

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[14] See, for instance, the article written by Messrs Derry Wong and Erik Shum, "Time to Review Loitering Law", The Law Society Gazette, October 1987, pages 22-28.

[15] See Mr Peter Morrow's article, "Loitering in Hong Kong", Vol 17 No. 3 HKLJ 329 (1987); a discussion of the origins of Hong Kong's loitering laws appears in the summary of counsel's arguments in SHAM Chuen in the Privy Council decision at pp. 888-890.

4.6 To quote from Scott L.J. in Ledwith v Roberts (1937) 1 KB 232, at page 271.

> *"[The vagrancy laws] were framed exclusively in relation to that particular class of the community and had three purposes. The class consisted of the hordes of unemployed persons, many of them addicted to crime, then wandering over the face of the country; and the purposes were (a) settlement of the able-bodied in their own parish and provision of work for them there; (b) relief of the aged and infirm, that is, those who could not work; (c) punishment of those of the able-bodied who would not work.*

Scott L.J.'s judgment contains an interesting analysis of the history of the vagrancy laws.

4.7 On the other hand, the Metropolitan Police Act 1829 was expressed as an Act for improving the Police in and near the Metropolis. In its preamble it referred to the increase in offences against property, the inadequacy of the local establishments in the prevention and detection of crime and the need to establish a new and more efficient system of police. Whilst part of section 7 was to authorise the police to apprehend loose, idle and disorderly persons disturbing the public peace, it is probably true to say that, amongst other provisions of the Act, its primary and much wider purpose was preventing crime in the urban areas. The same is probably true for the similar provision in section 64 of the City of London Police Act 1839.

4.8 We considered to what extent section 160(1) was derived from the vagrancy laws and to what extent it no longer served its original purpose in the suppression of vagrants. On the other hand, had the provision always been used as a general crime prevention measure against intending criminals, and was it therefore as useful now as before?

What crimes does section 160(1) seek to prevent?

4.9 Without looking back at the history, one can deduce from the typical loitering circumstances that the crimes which section 160(1) seeks to prevent are typically pickpocketing, street robbery, burglary, and indecent assault. They all share the common characteristic that the criminal will go out to the street or other public place to search for the opportunity to commit crime.

Criticisms of the law

4.10 There are several areas of criticism levelled at the loitering law. Statistics showed that subsection (1) of section 160 was being utilised by the

police to the virtual exclusion of the remaining two subsections. Hence criticism focussed on subsection (1) under the following headings:

- loitering being a victimless crime, including potential abuse of the law

- unjustified inroad into the individual's right to silence

- effectiveness or otherwise of section 160

Victimless Crime

4.11 There are two aspects to the objection that section 160(1) has created a victimless crime. The first relates to the school of thought held by some writers who argue that the criminal law should only punish acts that cause harm to others. There is much debate as to the concept of "harm" in the theory and to what extent the theory should lead to the decriminalization of the existing "victimless crimes". There is perhaps no need to address this any further; suffice it to say that the theory's acceptance is yet to be seen. In any event, this aspect of the objection has not been significantly pursued by the critics of the loitering law.

Abuse of the law

4.12 The second aspect of the objection, which is more important, is the potential danger that the law may be abused by the police. Given that police officers are professionally trained and more experienced in giving evidence in court and that no third party victims are required to give evidence, no one can argue that section 160(1) is not open to abuse. There will always be a possible problem with dishonest or overzealous police officers. This problem is not unique to the loitering law but exists in all victimless crimes such as possession of offensive weapons, possession of dangerous drugs, going equipped for stealing etc. The following safeguards against abuse were examined:

Duty Lawyer Scheme

Obviously this is one of the most important safeguards now available in the legal system. Free legal representation is offered to an arrested loiterer and the police evidence will be subject to a stringent examination, not only by the court but also by the defence lawyer.

Headquarters Order No. 4 of 1987 (Part One)

This Order requires the perusal of loitering cases by an officer not below the rank of Inspector. It also warns that the utmost care and attention to detail must be applied before any person is charged with loitering.

Civil suit of false imprisonment

In Ledwith v Roberts [1937] 1 K.B. 233, two police constables were sued for false imprisonment of the plaintiffs whom they arrested. The police constables sought to rely on the owner of arrest under section 6 of the Vagrancy Act 1824 and another statutory provision. Both defences failed. This case illustrates that a police officer who acts in excess of his power does so at his own peril. Section 160(1) as now interpreted by the Privy Council requires that the loitering must be in circumstances that reasonably suggest it is other than for an innocent purpose. This is an objective test. Thus should the court come to a different conclusion, not only will the "loiterer" be entitled to an acquittal, but he may also bring a civil action against the police officer.

4.13 To some extent, the question of whether existing safeguards against abuse are sufficient is a value judgment. We not only investigated the question whether theoretically the law was open to abuse, but whether the law has in fact been abused by the police. We did this by looking at CAPO figures and comparing the figure of complaints lodged by those arrested for loitering with those for other preventive arrests and other offences generally. We looked also at the percentage of cases in respect of loitering which are substantiated. Details appear in the next Chapter.

4.14 Although an informed member of the public may not be in a position to tell whether the loitering law has been abused, it was felt useful to gauge the public's confidence in the police. The questions posed to the public included whether it trusted the police and agreed to give wide power to the police notwithstanding the potential risk of abuse.

Right to silence

4.15 Another objection relates to the right to silence. At common law, every accused enjoys a "right to silence". He can simply refuse to answer any question put to him by a police officer or any other person. In civil proceedings the position is more complex, but a defendant can be compelled to give evidence in court, with the sanction of contempt, unless the answer to the question may tend to expose him to a criminal charge in which case he can claim the privilege against self-incrimination and refuse to answer the question. Although the terms "privilege against self-incrimination" and "right to silence" are often used interchangeably, it can be seen that the latter has a wider scope.

4.16 Since an accused cannot be compelled to give evidence, his "right to silence" remains and the court cannot generally draw an inference of guilt from his silence. However if the accused chooses to give evidence in his own defence, he can be cross-examined and has to answer questions even though answers to them may incriminate him in respect of the offence charged.

4.17 The criticism levelled at section 160(1) is that it provides a statutory compulsion to answer questions by the police and thus encroaches not only on the traditional common law right to silence but also on the privilege against self-incrimination. It was noted, however, that section 160(1) does not per se create an offence for not responding to questions. The suspect cannot be convicted simply because he refused or failed to answer questions. The prosecution must prove beyond reasonable doubt all the other ingredients of the offence. Section 160 does not punish silence; the punishment is for loitering. The provision for an explanation is arguably to enable the suspect to defend himself at the earliest opportunity. Conversely an answer will not necessarily absolve the suspect from liability. It was noted that in this regard, section 160(1) is similar to the presumption provisions in, for example, the Dangerous Drugs Ordinance in shifting the burden of proof partly on to the accused. The major difference is that under section 160(1) the burden has to be discharged at the scene, as opposed to a rebuttal given in court, giving rise to the "harsh cases" identified in Chan Chin-hung.

4.18 Another facet of the same criticism relates to the danger that answers given by a suspect questioned under section 160(1) may be used against him for other offences. Their Lordships' answer to this was that since such answers were involuntarily made they will be inadmissible. This conclusion was nonetheless criticised for being inconsistent with the authorities, in particular the decision in R v. Scott (1856) 1 Dears & BCC 47. Questions to be considered include to what extent statements made by a suspect when questioned under section 160 are analogous to those given by the bankrupt in R v. Scott during examination under the old Bankrupt Law Consolidation Act 1849. Why should the normal principles governing the admissibility of a confession made by the accused cease to apply to inculpatory statements made by the accused when he is asked to give an explanation under section 160(1)?

4.19 Under an adversarial system of trial, it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. This is also part of the rationale behind the right to silence and the privilege against self-incrimination. There are, however, cases which depart from this fundamental principle, notable examples of which are the drug offences. The justification for this departure is the difficulty for the prosecution of proving the subjective elements of an offence. This difficulty may impede the proper conviction of the guilty and can be said to damage society. The question to be answered is whether considerations of public interest justify a departure in the case of the loitering offence.

Effectiveness of section 160

4.20 In theory, section 160 is a powerful tool to combat street crimes. Is it effective? It was felt that this question could not be answered satisfactorily without studying and comparing the relevant crime rates for offences like pickpocketing, street robbery etc. It was also resolved to ascertain what sort of people were convicted of loitering in terms of their prior and subsequent criminal conduct. Extensive statistics were sought from Standardised Law and Order Statistical System (SLOSS) and from the Royal Hong Kong Police in this regard, the results of which are referred to in the next chapter. It was resolved also to review relevant crime rates in England to see if they registered any upsurge since the repeal of the "SUS" law in 1981. (In England, of course, the effect of the repeal was mitigated in part by the strengthening of the law of attempt, and the introduction of the offence of vehicle interference).

Chapter 5

Consultation

5.1 This Chapter is concerned with the extensive efforts made to ascertain the views of the public, interested parties (including civic and professional bodies), and local government agencies. Given the fact that the loitering law had attracted some controversy and could impinge on the daily activities of the man in the street, it was important not only to hear from as many sources as possible but also to take a look at the law in action by reviewing loitering cases in four selected magistracies over a period of four months. The views of interested parties were solicited and contemporaneous comment in the media was noted.

5.2 It is fair to say that the consultation was one of the most extensive carried out for the Law Reform Commission. It consisted of the following:

- the Telephone Survey of members of the public carried out in August 1988.

- the Magistracy Survey conducted from May to August 1988.

- analysis of 1987 SLOSS Statistics (Standardized Law and Order Statistical System) complied by Security Branch, Government Secretariat, Hong Kong Government.

- analysis of Report of Loitering Offenders for the years 1984 and 1987 compiled by the Royal Hong Kong Police Force Statistician.

- analysis of Loitering Cases reported to the Royal Hong Kong Police during 1981 - 1987, including Complaints Against Police Office (CAPO) figures.

- analysis of Hong Kong selected related crimes for the years 1982 – 1987.

5.3 There follows a brief description of the relevant conclusions obtained from these surveys.

Telephone survey

5.4 In August 1988, the City and New Territories Administration carried out a random telephone survey of members of the public (herein the

"Telephone Survey") on behalf of the Law Reform Commission to gauge public opinion on the loitering law. 2,167 households were successfully contacted over a space of five nights, and asked questions designed first to gauge their knowledge of the law and secondly to obtain their views. The Report on the Telephone Survey is set out at Annexure 1.

5.5 There was a danger inherent in simplifying a difficult topic. In a short time of perhaps ten minutes, the interviewer had to ask the correspondent five questions designed to elicit the correspondent's knowledge of the law, followed by an explanation by the interviewer of the law, and finally five questions seeking his opinion of the law. The last question itself dealt with loitering circumstances broken down into ten variables. Given the nature of the topic, it is hardly surprising that one conclusion was that the average man does not fully understand the law. He can be forgiven for his confusion, for the question whether a person can refuse to answer questions put to him by a policeman, for example (question 1 of the Survey) in the context of a loitering law is not without difficulty to lawyers themselves.[16]

Right to silence

5.6 A few words about the impact of the loitering law on the right to silence might be in order at this point. There is no comprehensive definition of the "right to silence", a fundamental feature of the common law. It could be described as the right of an individual to refrain from answering an investigating officer's questions or of a defendant to refrain from giving evidence in criminal proceedings without fear of an inference of guilt being drawn or the exercise of such a right being the subject of comment by the prosecutor or the judge. This right can be modified or removed. An example is the presumption in the Dangerous Drugs Ordinance that operates once it has been proved that the person has drugs in his possession or control. He is presumed to know that they were drugs unless he supplies evidence of a lack of knowledge and can thus be said to be indirectly compelled to give evidence.

5.7 It might be said, therefore, that section 160(1) affects the right to silence. If the person is not doing anything remotely considered as loitering, then he has the right not to answer police questions because the right encompasses the investigative as well as the prosecutorial aspects of a prosecution. If, however, he is behaving in a manner that could be considered "loitering" (i.e. non-innocent loitering) he will refuse to answer questions at his peril because such a refusal will constitute an element of the actus reus of loitering.[17] As the law presently stands even if he comes up

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16 See particularly the decision of Penlington J in R. v. Ma Kui. The Privy Council ultimately in Sham Chuen determined that section 160(1) did not make any undesirable inroads into the privilege against self-incrimination.

17 In broad terms, a person may not generally be convicted of a crime unless the prosecution has proved beyond reasonable doubt both (a) that he has caused a certain event or is responsible for a certain state of affairs forbidden by criminal law and (b) that he had a defined state of mind in relation to the causing of the event or the state of affairs.
The mental element is the mens rea and the fact situation is the actus reus.

with an explanation later in court it is possible he will be convicted of loitering. Seen in this light, section 160(1) could be said to cut across the right to silence markedly. The decision to answer or not must be made at the scene, not at court (as with the Dangerous Drugs Ordinance). The right to silence on the street is therefore subject to the individual not behaving in a manner that could reasonably be described as suspicious.

5.8 Despite the limitations regarding over-simplification of a difficult topic, the Telephone Survey had interesting results. Within each family contacted, there was a procedure for random selection of an adult over 18 years in the case of more than one such person. Under statistical theory, the number of respondents (1,363) is such that their views are likely to be representative of Hong Kong as a whole given their random selection.

5.9 The answers to the questions whether the loitering law has a deterrent effect, whether it is too harsh and whether it can be abused are the most illuminating of the Survey. The answers would appear to have a validity independent of the success of the respondents in answering questions about the law.

The loitering circumstances

5.10 The public gave support for the loitering law in the sense that they wanted the police to be able to take some action in the case of the loitering circumstances (question 10 of the Survey). These loitering circumstances, which are not exclusive but are those most often encountered, have been set forth in detail in paragraph 3.10 to 3.12 above. Respondents were asked whether, in each of these circumstances (i) a policeman should be able to require the person to identify himself and explain his conduct and (ii) to arrest him if the explanation was unsatisfactory.

5.11 In respect of the first three sets of circumstances (tampering with pockets in crowded streets, tampering with doors of buildings and vehicles) more than 90% answered part (i) in the affirmative and over 80% affirmatively for part (ii). The figures for circumstance 4 (following women into buildings) were slightly less with an 80% and 66% affirmative response respectively.

5.12 The answers to question 10 were unequivocal and overwhelming in so far as they showed that the public wanted the police to take action in these loitering circumstances. A majority of the Law Reform Loitering sub-committee took the responses to mean that the police should be able to arrest the person under section 160(1). They took support for this position from the fact that question 3 of the Survey referred to arrest of “a person who loiters in a public place and acts suspiciously”, and that prior to question 6 an explanation of the law of loitering was given to respondents in terms of the offence described in section 160(1). Furthermore, question 9 had stated that the loitering law gave police the power to arrest people loitering in public places.

The conclusions:

5.14 a majority of 49% to 40% felt that the present law was too harsh.

- 65% believed that the law reduced crime.
- 59% were worried that the law could be abused.
- A substantial majority of respondents felt that the police should be able to take some action in the case of each of the loitering circumstances.

The Magistracy survey

5.15 This Survey was based on a review of loitering charges in four selected magistracies over a period of four months. It showed, inter alia, a fact which was also corroborated from other sources that the numbers of cases under subsections (2) and (3) was so small as to be almost insignificant. (It should be noted, however, that while there is a law such as section 160(1), it may be that the overwhelming number of prosecutions will be brought under it for reasons of ease of prosecution).

5.16 70 cases were dealt with by the four magistracies over the four months. Of these 33 persons were convicted under section 160(1). The aim of the Survey was to learn as much as possible about the present use of the loitering laws in Hong Kong, and in particular to determine the fact situations in which persons were commonly convicted of the offence. In addition, it was desired to learn the average age of offenders, their triad association (if any), whether they had past offences and whether they were drug addicts.

5.17 The Survey also sought to address one very specific point: how often, if at all, where there was a conviction, did the suspect give either no explanation or an unreasonable one in situ, but later gave a reasonable explanation in court? (Under the law as it stands, he would suffer a conviction, identified as one of the critical failings of the present law). Unfortunately, the Survey did not succeed in gleaning this information from the Magistracies.

The conclusions

5.18 The Survey can be encapsulated as follows: 91% of those convicted had previous convictions; 52% were drug addicts; 12% were self-confessed Triads and another 15% had Triad associations and 33% were charged with another offence in addition to loitering. However, the sampling may have been too small to give rise to universal findings. The most typical

fact situation giving rise to the charge was a speculative burglar reconnoitering possible points of access.

Selective enforcement

5.19 One item that arose was the demographical use of the loitering law. 28 convictions had occurred in North Kowloon alone. The other magistracies were Shatin, Tsuen Wan and Kwun Tong. The police were quick to counter that the catchment area for North Kowloon (including as it does Sham Shui Po and Mongkok) was such that greater use of the loitering law was only to be expected, in that transients and "commuters" came into this area from outside. The argument was that Tsim Sha Tsui, if included, might have disclosed a similar trend. The police argued that North Kowloon had within its bailiwick a larger than average share of the type of crime which was the subject of the loitering law (eg pickpocketing, etc) and of vice generally.

5.20 For critics of the loitering law, selective enforcement between police jurisdictions of Hong Kong would be another reason for amending or abolishing it. It is open to question, however, whether the variation in the incidence of section 160(1) charges throughout the Territory necessarily shows that the law is not being uniformly applied.

Standardised Law and Order Statistical System ("SLOSS")

5.21 These statistics were complied by the Security Branch of the Hong Kong Government Secretariat from figures provided by the Royal Hong Kong Police and the Judiciary and gave details of loitering offenders in 1987. There were in 1987 1,394 loitering "cases". This is not, however, the number of offenders, one "case" including the situation where there are multiple offenders. There were 1,465 offenders in the 1,394 "cases". Of these, 1,000 cases (71.1%) involving 1,051 offenders were arrested for loitering as a principle offence. In the remaining 394 "cases" (28.3%), 414 offenders were arrested for loitering and other more serious offences emerged. Serious charges were laid and convictions obtained against some of these 414 offenders (and the loitering charge dropped). The offences charged range from rape to unlawful pawning, and these latter charges may in fact have absolutely no relation to the loitering.

The conclusions

5.22 The Police study and Judiciary study give indications of the background of those charged with loitering in 1987. The offenders were overwhelmingly male; most were unemployed or factory workers; half had Primary 6 or less level of education; 75% were recidivist (ie had a previous loitering or non-loitering conviction); 35% were drug addicts; 9.7% were

self-confessed Triads. 68% of arresting officers were plainclothes; 20.5% of accused were unrepresented in court; 65% were convicted.

RHKP survey of offenders convicted of loitering in 1984 and 1987

5.23 This Survey was conducted specially for the Loitering sub-committee. It appears at Annexure 2. Its purpose was to ascertain what type of person was convicted of loitering in those years, ie:

- did they have previous convictions?
- if so, what were these convictions?
- did they go on to commit crimes after their loitering convictions?

5.24 Some important explanations about the methodology of the Survey are required. First, the years 1984 and 1987 were chosen for the reason that it was felt that those years would provide more meaningful information than 1985 or 1986. During those two intervening years there was a hiatus in enforcement of the loitering law as a result of the decisions of MA Kui and SHAM Chuen. Prior to the beginning of 1987, the Privy Council had clarified the scope of loitering in its decision in SHAM Chuen.

5.25 It was decided to look only at the prior and subsequent non-loitering convictions of those convicted of loitering. (The loitering conviction in either 1984 or 1987 was of course the determinant which brought the person within the Survey but thereafter-loitering convictions were ignored). The reason for this was to deflect criticism that, assuming there were defects in loitering convictions, a plethora of loitering convictions might prove nothing at all. In particular, it would not necessarily display criminality in the conduct of the person. Other convictions, however, would show criminality of conduct engaged in by the study and, depending on the record, that he was a potential recidivist. An extension of this argument would be to say that loitering convictions (involving by definition activity preceding attempted crimes) were being obtained against the “right people”, ie those with a wider criminal propensity.

5.26 Finally, as regards subsequent non-loitering convictions, much less indication could be obtained from the 1987 loiterers than the 1984 ones because less time had elapsed when the Survey was commissioned in 1988.

The conclusions

5.27 The results of the Survey were quite striking on several counts. Of the 1,342 loiterers convicted in 1984 over 80% had prior non-loitering convictions. Two thirds had subsequent convictions. Of the 659 convicted offenders of 1987, 79.5% had prior convictions and 27.6% had subsequent convictions.

5.28 A table was provided showing a breakdown of the actual numbers of offences for each offender prior to and subsequent to the loitering offence. Of the 1,097 loiterers in 1984 with previous convictions, 8.7% of them had a record of more than 20 previous convictions; correspondingly, of the 902 (1984) offenders with subsequent convictions, again 8.7% had five or more subsequent convictions.

5.29 It was noted that there was a high incidence of serious assault, robbery, theft and narcotic offences. The argument was advanced that since those offences can involve loitering (e.g. waiting to make a narcotics sale, loitering as part of a pickpocketing exercise) the police were apprehending as loiterers defendants who had (or were subsequently to have) a record under the onerous criminal standard of "beyond reasonable doubt" of related attempted or completed crimes. Some members of the sub-committee believed that these statistics showed that the loitering law was a successful crime prevention measure. The loitering law prevented the commission of more serious offences by nipping their commission in the bud before the perpetrators could take further steps.

Loitering cases reported to RHKP 1981 - 1987

5.30 These figures show the approximate number of offenders and the disposition of the cases (including the acquittal rate) for the years in question. The statistics have some limitations in that each year has a large number of pending cases where conviction or acquittal is not known. Also, the effect of appeals decided in a subsequent year is not stated.

5.31 The conviction rate for loitering appears to be 65%, which is lower than for convictions as a whole at 75%. As could be expected, the acquittal rate for represented defendants is higher at 50%, compared to unrepresented defendants (about 30%).

Subsections (2) and (3) of section 160

5.32 An interesting aspect is the number of cases under subsections (2) and (3) of section 160. There was only one section 160(2) case during those seven years, making that charge insignificant. There were only 21 cases under section 160(3), making the percentages in relation to this subsection not particularly meaningful. While our terms of reference cover all the subsections of section 160, there is no doubt that our main concern is with subsection (1). This is after all the subsection under which most charges are brought and which provokes most criticism and comment.

Complaints Against Police Office (CAPO)

5.33 Critics of subsection (1) of section 160 have complained that it is a victimless crime and as such particularly subject to abuse by the police.

Section 160(1) cases rarely if ever involve "independent" witnesses as opposed to police witnesses. Cases could therefore turn on the credence placed on the policeman's testimony versus that of the accused. This can give rise to the claim that the accused has been "framed" by fabricated police testimony. Statistics were therefore requested to find out in how many instances accused persons had complained of such tactics. The figures were provided by the CAPO Unit of the RHKP.

5.34 The statistics showed that in 1987 there were 150 complaints relating to loitering (about 10 - 15% of offenders in that year). They further showed that over two thirds of those complaining did so on the basis that evidence had been fabricated against them. However, almost half of the complaints were withdrawn, and of the remainder only six were substantiated, one for fabricated evidence. The rest related to abusive language, impoliteness of officers and neglect of duty.

5.35 The total number of complaints being considered by the Police Complaints Committee in 1987 (spanning 1985 to 1987) was 3,977 of which 150 related to loitering.

Interested parties

5.36 Since it was felt that public opinion on this issue was an important factor submissions were invited from a wide range of interested parties. These included district boards and district fight crime committees, civic bodies, professional organisations and a whole host of bodies which might have an interest. The list of those district boards, district fight crime committees and organisations responding is at Annexure 3.

District Boards

5.37 The District Boards discussed the loitering law at their regular meetings and sent extracts of the minutes of their meetings to the Secretary of the sub-committee. Because of the myriad comments from Board members and the fact that votes as such were not taken at all meetings, it is impossible to tabulate their overall views on the law but as a rough indication about 41 Board members spoke out in favour of retention, 31 for repeal and 16 for amendment.

District Fight Crime Committees

5.38 These were in favour of retaining the existing law.

Other contributions

5.39 Submissions received included those from the Hong Kong Bar Association and the Hong Kong Law Society. Dr Mark Gaylord of the Department of Social Studies at the City Polytechnic discussed with sub-committee members the “broken window” theory of criminology.

5.40 A total of 97 persons or organisations were asked for their views of whom 16 responded. Each of these responses was carefully considered in the course of drawing up the recommendations of the report.

Chapter 6

Other jurisdictions

6.1 The experience of other jurisdictions is frequently of assistance in considering whether or not reform of the law is necessary or desirable. In this regard it was noted that the trend worldwide had been to abolish loitering laws for a variety of reasons which included opposition by a minority population and a view that such laws were anomalous in that they criminalised behaviour which fell short of a criminal attempt. The principal jurisdiction of interest was England and Wales where the loitering provisions had been abolished in 1981 (albeit with the simultaneous introduction of a new offence of vehicle tampering). The approach of New Zealand and Western Australia was also studied.

The English experience

6.2 The English law of the "suspected person" offence was different from S.160(1) of the Hong Kong Crimes Ordinance. The offence related to "suspected persons", under section 4 of the Vagrancy Act 1824. It prohibited "every suspected person or reputed thief [from] frequenting or loitering about in any river, canal, or navigable stream, dock or basin or any quay, wharf or warehouse near or adjoining thereto, or any street, highway or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street or any highway or any place adjacent to a street or highway with intent to commit an arrestable offence".

6.3 Section 15 of the Prevention of Crimes Act 1871 as amended provided that in proving intent for the purposes of the 1824 Act, it was not necessary to show that the person suspected was guilty of any particular act or acts to show his purpose or intent and that he might be convicted if, from the circumstances of the case, and from his known character as proved to the justice, it appeared that his intent was to commit an arrestable offence. The 1824 Act as so amended was applied by section 7 of the Penal Servitude Act 1891 to every suspected person or reputed thief loitering about in any of the said places and with the said intent.

6.4 The Hong Kong law immediately preceding section 160 corresponded with this approach. Then, in 1979, section 160(1) of the Crimes Ordinance was introduced to read:

> *"Any person who loiters in a public place or in the common parts of any building shall, unless he gives a satisfactory account of himself and a satisfactory explanation for his presence there, be*

guilty of an offence and shall be liable on conviction to a fine of $2,000 and to imprisonment for 6 months."

Problems with the English offence

6.5 It could be argued that the problem with the English offence largely revolved around its impact on the minority black population there. Thus paragraph 9 of the Memorandum submitted by the Home Office entitled "Minutes of Evidence Taken before the Home Affairs Sub-committee on Race Relations and Immigration", dated 20 March 1980, stated in part as follows in paragraph 9:

> *"Currently, the controversy, aroused by this offence relates almost entirely to its use in relation to black people, to alleged discrimination in this use, and to consequences for racial harmony and equality of treatment; though it is true that the offence is also attacked on other grounds. Relations between the police and black people have been a subject of concern for some years. The use by the police of the 'suspected person' offence, coupled with allegations of discrimination and harassment, began to emerge as a particularly sensitive feature of this relationship in about 1976."*

6.6 This is borne out by the fact that in earlier materials, where there was no discussion of the racial elements, a contrary conclusion about the "suspected person" offence was reached, and the provisional view was that an offence of being a "suspected person" was still necessary.[18]

6.7 In the "First Report on Street Offences", the "suspected person" offence was seen as peculiar in that it attempted to control behaviour which was neither a substantive nor an attempted offence. A person could be charged as a suspected person when there were a number of incidents of suspicious behaviour which add up to something more than mere suspicion but which fell short of an attempt.

6.8 The Working Party on the First Report noted that the police relied on the provision in dealing with a number of preparatory acts where there may have been no indication as to the exact nature of the contemplated offence, or where the accused may not have proceeded far enough to justify a charge of attempt. It was noted that the police saw the offence as having a substantial deterrent value, and considered it a useful measure of crime prevention.

6.9 The conclusion of the Working Party was that the offence was likely to be necessary even if the scope of the law on attempts was widened. The Report stated in Paragraph 203:

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[18] See, for example, the First Report of the Working Party on Vagrancy and Street Offences which reported in 1974.

> *"The offence should in our view be limited to the case of a person whose antecedent conduct in a public place reveals his intent to commit an arrestable offence. 'Antecedent conduct' should, as under the existing law, include at least one suspicious act before and distinct from the act which caused him to be charged with the offence."*

6.10 The factual situations contained in an Appendix to the Report were very similar to the loitering circumstances in the Telephone Survey for which there was public support for police intervention.

6.11 In 1976 the "Second Report" of the same Working Party stated that it recognised that a "suspected person" offence was open to abuse, but concluded that there were situations where society had a right to be protected when a person is apparently embarking on a criminal project (paragraph 68 thereof). It recommended an offence limited to the case of a person whose antecedent conduct in a public place revealed an intent to commit an arrestable offence. "Antecedent conduct" should include at least one suspicious act before and distinct from the act which causes him to be charged (paragraph 70). (The effect of this change would be to eliminate the "reputed thief" aspect of the English offence whereby prior convictions could be used to convict a person of the "suspected person" offence).

6.12 In connection with race relations, certain statistics (which were not themselves evidence of racial discrimination) were nonetheless giving cause for concern. Thus a Home Office study[19] showed that in 1975, London arrest rates for "blacks" were higher than would be expected from their numbers in the population. Further, from victims' reports it emerged that "coloured" assailants were disproportionately involved in assault, robbery and other violent thefts. Blacks were more heavily arrested for "sus" (as the offence was popularly known): the question arose whether there was selective perception of potential or actual offenders.

6.13 Ultimately, it became undesirable to distinguish between the effect of "sus" on relations between the police and blacks, and the problem of the nature of the offence in general. A 1980 Study received much evidence in favour of repeal, and made such a recommendation.[20]

The demise of "Sus"

6.14 The arguments for and against the offence in England and the ensuing discussion are of more than passing interest and can be related briefly here. The Police argued that it was essential in the public interest "that police retain the power to arrest suspected persons loitering with intent to commit crime" because they could intervene at an earlier stage in a criminal

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19 Race, Crime and Arrests, Home Office Research Study No. 58(1979).

20 Second Report, Home Affairs Committee, Race Relations and the "Sus" Law (1980).

enterprise than would otherwise be possible. If this power were removed, the police would have to wait for, at the very least, an attempt, and this delay could endanger people and property (1980 Study, para 20 – reference is hereafter to the Second Report of the Home Affairs Committee reporting in February 1980). The Committee noted that there was evidence that "sus" was useful to the police as a general catch-all provision, giving them back-up when they had not enough evidence to arrest for actual or attempted theft, but they knew that somebody was "up to no good" (para 21).

6.15 The most important argument against "sus" was that "sus" was a fundamentally unsatisfactory offence in principle. It was not generally acceptable in English law to exact penalties for forming a criminal intention. The Committee noted that under the then English law, two overt acts indicating the intention were required. However, those acts might be equivocal in that they might not be criminal in themselves (para 22).

6.16 The Home Affairs Committee noted the testimony of one magistrate supported by the chairman of the Criminal Bar Association, who felt that the burden in "sus" cases was unduly on the defendant to explain in court what he was doing and why he was doing it.[21] It concluded that it was not in the public interest to make behaviour interpreted as revealing criminal intent, but equally open to innocent interpretation, subject to criminal penalties.

6.17 The English Committee noted that in "sus" the prosecution case was almost always founded on evidence from two police officers, unsupported by any "civilian" witnesses, but noted that this was not surprising because the potential victim might be unaware of the threat (para 25).

6.18 The English Committee stated that, in its opinion, it was questionable whether the accused could themselves have been certain as to their precise intentions when arrested. It concluded that the public interest was not served by an offence which left a significant proportion of those convicted feeling aggrieved (para 27).

6.19 There was no doubt that the "sus" charge was deployed where there was insufficient evidence on which to base a charge of attempt, such as where the accused had not embarked on a course of action which, if not interrupted, could have led directly to the commission of an offence. It then reached the conclusion that Lord Chief Justice Hewart's admonition in 1924 was being ignored that where there was insufficient evidence to charge attempt, the prosecution should not "on such insufficient evidence" obtain a "sus" conviction.

6.20 The English Committee felt that the use of "sus" damaged relations between police and the black community (para 29).

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[21] Mrs Leah Harvey, JP, Chairman of the Bench of the South Central Division, Inner London Commission, with whom her fellow magistrates agreed; see paragraph 24 of the Home Affairs Committee's Second Report.

6.21 The English Committee found it difficult to believe that the total Metropolitan Police Department's black "sus" arrest rates, let alone certain Divisional figures, accurately reflected black involvement in street crime. It said that selective perception of potential offenders was inherent in "sus", and that its repeal would remove such grounds for "suspicion" that might exist (para 33).

Alternatives

6.22 The English Committee, in the light of their recommendations for repeal, had occasion to review possible alternatives. It concluded that the repeal of "sus" would leave a gap, but it would be insignificant in view of the implications for civil liberties and race relations (para 34).

6.23 Alternatives listed were local powers to stop and search, and in some cases to detain, the general power of arrest under the 1967 Criminal Law Act, warning or cautions, and the presence of uniformed policemen (paras 35 and 39).

6.24 There would be cases where it would be necessary to wait for a concrete attempt, the Committee then referring to pre-Criminal Attempt Act 1981 problems with attempts and expressing confidence that the Law Commission Report on Attempt would suggest solutions (paras 26 and 37).

6.25 The Committee concluded that reformulation of the existing law would not solve the problems inherent in "sus" (para 40). It concluded that the Metropolitan Police Department's own suggestions for improving Force procedures could not be expected to allay anxiety about the law (para 41). It was not the archaic language of section 4 that was objectionable, but the principle underlying that language.

6.26 The Committee felt that the gap left by the repeal of "sus" was not one which a civilised community would wish to fill (para 44).

6.27 A subsequent English Paper noted that both the law of attempt and "sus" were concerned with the stage before a completed offence has been committed but when sufficient steps have been taken to give some indication of criminal intention. Commenting on the pre-1981 law in England, the conclusion was reached that the law of attempt could not be used for all cases where the "suspected person" offence was deployed[22].

6.28 The apprehension of entire sectors of the black community about the "sus" law was acknowledged. Regarding the higher arrest rate of blacks for "sus", the paper commented that there was no direct evidence that this rate was an unfair reflection of their involvement in criminal activity of this kind (ibid para 14).

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[22] Home Affairs Sub-committee on Race Relations and Immigration, memorandum dated 20 March 1980, paragraphs 7 and 8.

6.29 Chief Constables made clear to the Home Office in their evidence that abolition of the offence without any adjustments to the law of attempt or powers of arrest, would be considered an unwarranted concession to special pleading which would itself risk damaging relations between the police and ethnic communities (ibid para 22).

English statistics

6.30 For the sake of completeness, mention here is made of some brief statistics regarding selected crimes in London before and after the abolition of "sus".[23] In 1988 the Royal Hong Kong Police requested these statistics from their London office.

6.31 The figures are, however, somewhat inconclusive. For example, there was a dramatic increase in robbery cases (robbery following a sudden attack in the open) from 3,771 cases in 1977 to 7,231 in 1982. The increase continued up to 11,594 in 1987. However, the statistics for the years intervening between 1977 and 1982 are not provided, and this weakens any conclusions somewhat.

6.32 A further problem is the introduction of the new offence of vehicle interference by the Criminal Attempts Act 1981.[24] The chart specifically states that the figures pre- and post 1980 are not comparable, and therefore no direct conclusion can be reached.

Western Australia

6.33 This State has a law based on the English Vagrancy Act 1824, viz section 43(1) of the Police Act, 1892 - 1962. This offence is, together with all Police Act offences, currently under review by the Law Reform Commission of Western Australia. It gives a power of arrest to an officer regarding all persons whom he has just cause to suspect of having committed or being about to commit any offence (or of any evil designs) or found loitering in various public places if such persons do not give a satisfactory account of themselves.

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23 Extracts from Home Office Crime Statistics for Metropolitan Police District 1977 to 1987.

24 Under the heading of motor vehicle thefts, there had also been a rise from 20,588 cases in 1977 to 31,782 in 1982. Thereafter the figure goes up and down. Section 9 of the Criminal Attempts Act 1981, however, introduced a new law and provided for a substitute offence of "vehicle interference". The section provides that a person is guilty of this offence "if he interferes with a motor vehicle or trailer or with anything carried in or on a motor vehicle or trailer with the intention that an offence specified in subsection (2) below shall be committed by himself or some other person". Section 9(2) provides that the offences mentioned in section 9(1) are: (a) theft of the motor vehicle or trailer or part of it; (b) theft of anything carried in or on the motor vehicle or trailer; and (c) an offence under section 12(1) of the Theft Act 1968 (taking conveyance without authority); and if it is shown that a person accused of an offence had the intention that an offence should be committed, it is immaterial that it cannot be shown which offence it was.

6.34 In the Western Australian case of Di Camillo v. Wilcox (1964) W.A.R. 44, the meaning of "loiter" was discussed. There, a judge hearing a magistracy appeal was of the opinion that it was not loitering under that section for a man to stand still in street for a short space of time looking into a lighted window.

New Zealand

6.35 New Zealand's law was of interest particularly in the light of its slightly different approach. Section 28 of the Summary Offences Act, 1981 criminalizes the act of being found in a public place behaving in a manner from which it can reasonably be inferred that a person is preparing to commit an offence.

6.36 At first sight there was thought to be much advantage in the seeming simplicity of the New Zealand provision. However, opposition rallied against subsection 28(3) which provided that prior criminal convictions of a similar nature could be used to prove that the person must have been preparing to commit a crime in the case before the court, ie to aid the reasonable inference that the person was preparing to commit a crime.

6.37 Disapproval of this provision led to a reappraisal of the merit of the New Zealand approach in the context of Hong Kong. Hong Kong's present Ordinance uses the word "loiters" in each of the three subsections of s.160. In addition, the Territory has, as noted, had the benefit of a Privy Council interpretation (and other authorities) on the existing subsections. The introduction specifically of the word "behaviour" (as in New Zealand's law) was believed to introduce more uncertainty that was merited. It would add a new tier to the crimes of attempts and completed crimes, viz behaviour from which criminal preparation could be inferred, and was unacceptably vague and broad in that regard.

Chapter 7

Options for reform

7.1 In the preceding chapters we have described the present law and the objections to it, reviewed the results of surveys on that law and examined the approach adopted in other jurisdictions. It now falls to consider what course we think the law should take. In our opinion, the options for reform narrow themselves down to three options, as follows:

- retention of section 160 of the Crimes Ordinance (Cap 200) in its present form.

- retention of section 160, but with a revised formulation of subsection (1) to take account of the objections to, and difficulties with, the present law to which we have referred earlier.

- repeal of section 160(1) while retaining subsections (2) and (3).

Retention of the present law

7.2 We have outlined in the preceding chapters the existing law and its shortcomings. The criticisms of the present formulation of section 160(1) are, in our view, cogent and we do not therefore believe that to leave the law as it stands is a realistic option. Like the sub-committee, we therefore reject that alternative.

Retention of section 160 with a revised formulation of subsection (1)

7.3 An alternative option for reform would be to retain the loitering provisions of section 160(1) but in a revised form which takes account of the objections which takes account of the objections which have been raised to the present law. This was the option favoured by a majority of the sub-committee, with the sub-committee unanimously in favour of retaining subsections (2) and (3) of section 160 as at present constituted.

7.4 The revised section 160(1) proposed by the sub-committee appears at Annexure 5. Its key elements are as follows:

(i) there must be circumstances which reasonably suggest the suspect's purpose is the commission of an "arrestable offence". The intention is therefore to direct police action against the

non-innocent loiterer but to ensure that the loitering provisions are not applied where only a wholly trivial substantive offence is in contemplation.

(ii) the defendant would be given a second chance in court to give a satisfactory account and explanation in court. This avoids the present difficulty that the loitering offence is complete if the accused fails to give an explanation to the police officer at the time of the alleged offence. Even if he has a satisfactory explanation but does not give it because of, for instance, embarrassing circumstances the accused is, as the law stands, precluded from offering that explanation subsequently in court.

(iii) evidence given by an accused in relation to a loitering charge will not be admissible against him in any other criminal proceedings. This enables the accused to offer a full explanation of the circumstances of his loitering without fear of the consequences.

(iv) the revised loitering provision should only be enforceable by a police officer. At present, the law is silent as to who may or may not enforce the loitering law. It was thought sensible to spell out clearly the police's exclusive jurisdiction in relation to loitering.

7.5 The remainder of this chapter examines in greater detail the sub-committee's proposal and describes the reasoning behind their approach.

Initial decision to have a loitering law

7.6 Those in the sub-committee who wanted to retain section 160(1) (albeit in an amended form) over and above subsections (2) and (3) did so on the basis that such a law would be a proven and a successful crime prevention measure. They gave serious consideration to the views of the "man in the street" as set forth in the Telephone Survey that the police should be able to take action in the various loitering circumstances. They felt that section 160(1) could not be abolished without leaving an undesirable gap. They particularly took into account the "empirical" evidence of the Telephone Survey and the RHKP Survey of Offences Convicted of Loitering in 1984 and 1987.

7.7 Turning to the results of other consultation undertaken on loitering, the District Boards were seen to be split on section 160 in its present form and no clear mandate existed there. The District Fight Crime Committees were solidly in favour of section 160(1). Interested outside parties (such as the Law Society, the Bar Association and University lecturers) were substantially opposed to the present law on doctrinal grounds. The sub-committee endeavoured to meet their criticisms in the formulation of its recommended draft amending section.

Triggering circumstances – "arrestable offence"

7.8 The sub-committee considered that not all non-innocent behaviour should trigger the loitering offence. The sub-committee felt that the present section 160(1) was too broad in permitting a conviction for loitering where the accused was idling around with the intention to commit a minor crime. The example debated was that of a person intending to commit a parking offence. The sub-committee believed that the existing crime was too broad and inconsonant with the times in which we live when there is justifiably concern for human rights. Limiting the offence as proposed by the sub-committee was seen to be more harmonious with the International Covenant on Civil and Political Rights.

7.9 The existing statute is silent as to the intention of the suspect but it has been judicially interpreted in SHAM Chuen as all loitering for non-innocent purposes. The new policy was to be that there should be a cut-off whereby a loiterer, to be a loiterer, must have an intention to commit specific crimes, determined ultimately to be crimes for which imprisonment may be imposed for more than one year. This would exclude minor and regulatory offences. Such minor and regulatory offences were not listed specifically. Instead, the Royal Hong Kong Police were requested to provide a list of offences which they believed should be covered by any loitering provision. The sub-committee's intention was to cover only such offences as were thought necessary. The Police provided a list of offences and this appears at Annexure 4. Three of the offences listed carry maximum sentences of imprisonment of one year or less (No. 17 – common assault, Nos. 12 and 13 – soliciting for an immoral purpose and indecency in public) and would therefore be excluded from the operation of the loitering law.[25]

7.10 The sub-committee decided on "arrestable offence" as the determining factor limiting the circumstances in which loitering can arise.[26] The sub-committee decided against listing in a schedule the specific offences which would trigger the loitering law. Instead, it recommended the addition of words in section 160(1) to the effect that loitering must be "in circumstances that reasonably suggest (the loiterer's) purpose is the commission of an arrrestable offence". The observing officer will therefore have to have reasonable grounds (an objective test) for believing that the suspect is about to commit an arrestable offence, based on his observations and any explanation of the suspect.

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[25] It was pointed out that soliciting was an inchoate crime itself, and it was hard to imagine circumstances in which a person could be idling or hanging about with the intention to commit soliciting.

[26] After some discussion of alternative approaches, the sub-committee decided that there was an advantage in using a term which was already well understood. The definition of "arrestable offence" in the Interpretation and General Clauses Ordinance (Cap 1) is an offence for which the sentence is a term of imprisonment exceeding twelve months.

The three omitted offences

7.11 There was strong opposition from the Police representative in the sub-committee to the omission of common assault, soliciting for an immoral purpose and indecency in public from coverage by the loitering law. It was suggested that suspects would admit an intention to commit one of these three offences, and thereby escape punishment. The sub-committee felt that it would be a matter of the credibility of the suspect, to be assessed by the magistrate. In any event, it was argued, a satisfactory explanation under SHAM Chuen could not include disclosure of an intention to commit a lesser offence.

7.12 One member, however, pointed out that it is a satisfactory explanation under ICAC legislation to say that gains are the result of robbery or theft. By the same analysis it could be a satisfactory explanation for a person to say that he was loitering with the intention to commit one of the lesser offences. It was pointed out in support of this argument that SHAM Chuen is concerned with interpretation of a statute (the present law) which has no limitation of coverage.

7.13 The sub-committee nonetheless recommended the use of "arrestable offence" alone (without any schedule to cover the three omitted offences). It was pointed out that under the former English law (the "suspect person" offence) the person must have had the intention to commit a felony which was by definition a serious offence. The Police representative requested that, if any revised law which was adopted as a result of these proposals was abused by suspects relying on any of the three omitted offences, the law should be reviewed as a matter of urgency.

7.14 Consideration was given to requiring the police officer to nominate at the scene the particular offence which he thought the suspect was about to commit. This would ensure the best possible opportunity to give a satisfactory explanation. The suggestion was rejected as impractical and unnecessarily complicated. The effect of a wrong nomination where the suspect nonetheless had a criminal intention covered by loitering was unclear.

A second chance

7.15 The sub-committee recommended the introduction of an opportunity for the suspect to give a satisfactory explanation at court as well as at the scene. In order to prevent fabrication of a story after arrest, the suspect should also be required to explain why he failed to give a satisfactory account or explanation at the scene. This proposal was to meet the objection to the existing law that the offence is committed even where the accused later gives evidence in court and offers a credible explanation consistent with an innocent purpose (see paragraph 3.20 above). Under this proposal, the defendant would have to show on the balance of probabilities that his failure to provide a satisfactory explanation at the scene was reasonable in the circumstances. This approach would, the sub-committee

believed, permit acquittals in deserving cases, such as where the suspects are unfamiliar with police powers and procedures and may have been intimidated. Such a change would also render the loitering law less subject to attack on human rights grounds.

7.16 The sub-committee recommended the retention of the dual categories of "satisfactory account" and "satisfactory explanation". While it might be said to be slightly unclear from case law (and in particular SHAM Chuen) what the exact parameters of each category are and whether they overlap in any way, the sub-committee felt that the lack of clarity was minimal and that the concepts should be retained in their present form. This was in accordance with the sub-committee's approach of leaving unobjectionable parts of the existing section 160(1) unchanged. On a superficial level it could be said that "satisfactory account of himself" refers to matters of identity level it could be said that "satisfactory account of himself" refers to maters of identity and possibly conduct, whereas "satisfactory explanation of his presence there" refers to his conduct and reasons for conduct.[27]

The privilege against self-incrimination

7.17 With respect to the privilege against self-incrimination, the sub-committee recommended, first, that as regards other criminal charges, if the defendant gave evidence in court, anything he said should not be admissible to prove these other charges. The sub-committee, however, recommended that an exception be made in the case of perjury by the suspect during his testimony. The reason for the exception was quite simply that the crime of perjury is an affront to the tribunal hearing the evidence, and there is no overwhelming reason to give a loitering suspect immunity from such a serious charge.

7.18 The reason that the suspect should have a privilege covering all other crimes during his testimony is of course to provide him with protection and encourage him to give an explanation in court should he need to do so. In the absence of such protection, there would be an argument that the privilege (which is mandated under Article 14(3)(g) of the International Covenant on Civil and Political Rights) was illusory in connection with the loitering law. The basis for the specific introduction of this aspect of the privilege arose directly from the introduction of the "second chance" concept.

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[27] Analysis of SHAM Chuen, both in the Court of Appeal and the Privy Council reports, disclosed the potential for overlap in the two concepts of "satisfactory account of himself" and "satisfactory explanation of his presence there" contained in section 160(1). Both concepts could include a reference to the defendant's conduct, and it was not simply a case of saying that "satisfactory account" referred to identity and "non-conduct" matters, the nature of which would vary with the circumstances. The Court of Appeal decision specifically states in both majority and minority reports that "satisfactory account" covers an explanation of what the suspect was doing and why (ie conduct). In the Privy Council, the court preferred to concentrate on the concept of satisfactory explanation without considering satisfactory account. It said that the satisfactory explanation must be credible and consistent with an innocent purpose.

7.19 Secondly, the sub-committee recommended that there be express clarification of the situation regarding the same privilege with regard to the investigatory stage of loitering proceedings initiated by the police. It recommended that the present application of the law, as stated in SHAM Chuen, be continued, that is to say that questioning of a suspect does not and should not make any undesirable inroads into the privilege against self-incrimination.

7.20 The effect of this second recommendation was as follows. If during investigation a suspect made an incriminating statement inculpating himself in other criminal activities under threat of a loitering charge, he would have an argument that this statement is not voluntary and should be suppressed. The prosecution would have to prove beyond reasonable doubt that the statement was voluntary. If, however, a caution was administered immediately prior to the incriminating parts, it would be open to a judge to decide that the caution had "cured" any preceding threat or reference to loitering proceedings being brought. The position would therefore depend on the facts of each case before the court, and the intention was to maintain the status quo in this regard.

Enforcement by police officers

7.21 The sub-committee recommended that enforcement of the loitering laws should be a matter for police officers only. This would cover auxiliary officers during their hours of duty. It thus recommended a change from the present law whereby, at least theoretically, a private citizen could enforce the law. The change could be made by adding to the statute a provision providing that the satisfactory account and explanation be given to a police officer. The present statute is silent in this regard. The reason for the change was in part that very few citizens if any presently get involved with section 160(1), and that there was no reason that they should. The Police were moreover the only people with experience of enforcing section 160(1), and this enforcement was covered by the safeguards contained in Headquarters Order No 4 whereby officers' conduct was reviewed by superior officers. A proposal to extend enforcement to members of other disciplined services (e.g. Customs and Excise) did not win favour.

The fine

7.22 The sub-committee recommended an increase in the fine from the present $2,000 as a result of the inflation Hong Kong has experienced over the years since 1979. Rather than substitute a figure now, and in view of the substantial time which can elapse before a Bill is enacted if at all, the sub-committee recommended that the amount of the penalty be revised upward closer to the time of enactment.

International treaty obligations

7.23 Finally, it should be noted that the sub-committee believed its amended formulation of section 160(1) would comply with the International Covenant on Civil and Political Rights, and in particular would not contravene article 9(1) (freedom from arbitrary arrest or detention), article 14(2) (right to be presumed innocent), article 14(3) (the privilege against self-incrimination) and article 17(1) (freedom from arbitrary or unlawful interference with privacy).
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Chapter 8

The Commission's recommendations

8.1 In the last chapter we referred to the three options for reform which were available (see para 7.1) we examined two of those options (retention of section 160 in its present form and retention of section 160 but with a revised formulation of subsection (1)) in detail but have not yet considered the third option: repeal of section 160(1).

Our conclusion

8.2 The sub-committee's conclusion and specific recommendation for an amended loitering law does not find favour with a substantial majority of us. In saying this, we nonetheless pay respect to the analysis and hard work involved in producing the sub-committee's Report, both by the sub-committee and the Law Draftsman.

8.3 In our view the objections to the present section 160(1) of the Crimes Ordinance (and even its proposed amended form, at Annexure 5) outweigh its usefulness. These objections are that a loitering law is wrong in principle; that section 160(1) or a variation of it is capable of abuse; and that there is an alternative at present available which is efficacious and does not suffer from the drawbacks of section 160(1) (or a variant of it).

Sub-committee minority

8.4 In reaching our conclusion, we have reviewed the arguments of a minority of four sub-committee members who voted to repeal section 160(1) when the question of the retention of a loitering law was first discussed by the sub-committee. We find merit in their arguments, which included:

- objections in principle to section 160(1)
- the potential for abuse which exists under the present law
- the availability of a less objectionable substitute

Objections in principle

8.5 This argument revolves around the belief that section 160(1) criminalises behaviour that is not necessarily "criminal", viewed in terms of the existing categories of crime (ie completed crimes and attempts). The

inescapable fact is that, if there is to be a loitering law, the line has to be drawn between conduct that is not unlawful (innocent loitering) and behaviour that is unlawful (innocent loitering) and behaviour that is unlawful as loitering (but is nevertheless not a completed crime or an attempt). No matter what concepts are used or what test is applied, this can be an extremely difficult exercise. In our view, the difficulties of determining in practice the fine line between "criminal" and "innocent" conduct in this context is such that it is better to repeal the law altogether. This is an independent ground for repeal, but it receives reinforcement from the other grounds referred to, particularly the danger of abuse of the law. We note in passing that objections in principle contributed to the repeal of the "suspected person" offence in England in 1981 and that the trend worldwide is towards abolition of the offence in the jurisdictions that retain it, as discussed earlier in Chapter 6.[28]

Abuse of the law

8.6 A minority of the sub-committee felt that the law was subject to abuse. They cited the "victimless" aspect to the crime, which rendered the law particularly subject to potential abuse. They were particularly concerned about the mentally-handicapped and those caught out in "embarrassing situations" who might give inadequate explanations or none at all. We agree with the concerns of the minority in this instance. In addition to our objection that the "conduct" attacked under section 160(1) is not necessarily "criminal", a further objection is that the "conduct" is laid before the court invariably through police testimony alone and not independent third party testimony from a victim or other witness. The danger of abuse seems so great in this particular instance as to justify repeal. Nor does the introduction of a "second chance" to enable the accused to explain in court appeal to us as a solution to this problem.

Substitute available

8.7 In our opinion, there is already an existing substitute available in section 54 of the Police Force Ordinance (Cap 232). This provides:

> *" It shall be lawful for any police officer to stop and search and if necessary to arrest and detain for further inquiries any person whom he may find in any street or other public place, or on board any vessel, or in any conveyance, at any hour of the day or night, who acts in suspicious manner or whom he may suspect of having committed or of being about to commit or of intending to commit any offence."*

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[28] The Western Australia Law Reform Commission has reviewed Police Act Offences (including section 43.1 thereof) in its Discussion Paper Project No. 85, May 1989. It recommends that, if the offence is to remain, it should be modernised.

8.8 We consider that the police should, in principle, have the power to stop and question persons in public who act in a suspicious manner. We consider that section 54 confers such a power. We recognise that the particular wording of the section is open to various interpretations, as regards the scope of the power to arrest. We do not regard it as necessary, for the purpose of our recommendations, to comment upon or espouse one interpretation as against another. It is sufficient to our recommendations that the section does, in our view, confer the power which we have described and which we regard as necessary for the police.

8.9 While we believe that section 54 provides an adequate substitute for section 160(1) of the Crimes Ordinance for reasons which we will outline below, the sub-committee took the contrary view and concluded that there were a number of difficulties associated with section 54. Firstly, the sub-committee pointed out that the section is itself under review by the Law Reform Commission sub-committee on Police Powers of Arrest and reliance on section 54 remaining in its present form indefinitely might be misplaced. Secondly, if section 54 is to be viewed as a substitute for section 160(1) there may be unacceptable demands on police manpower to provide the same level of protection.

8.10 Thirdly, there are difficulties of interpretation of section 54. It is not clear what constitutes "necessity" before arrest and detention, nor in relation to what crime the arrest should be made. On one view, necessity would be predicated on resistance to the police officer in the execution of his duties, in which case the arrest would be for resistance to the police. The sole authority in this area, Kwong Chung Shing, provides no guidance.

8.11 Some members of the sub-committee considered that the police powers of arrest in England appeared to be broader than those in Hong Kong. Reference was made to s. 2(5) of the Criminal Law Act 1967 which provides that a police officer may arrest any person he has reasonable cause to suspect is about to commit an arrestable offence. Such an arrest would not necessarily be followed by criminal sanctions.

8.12 We have considered the sub-committee's objections to the use of section 54 as a substitute for section 160(1) and do not find them persuasive. First, we do not view the possibility of other reforms in the law at some future date as a reason to defer our recommendation for the repeal of section 160(1). We recognise that police powers of arrest and detention are currently being reviewed by a sub-committee of the Commission, and that section 54 may itself come under scrutiny as part of that review. We have no doubt that any recommendations made in this report touching on section 54 will be given careful consideration by the Arrest sub-committee. The Commission itself will be considering the recommendations of that sub-committee in due course.

8.13 Secondly, we see no reason why the increased use of section 54 should pose greater manpower problems for the police than section 160(1). Indeed, it could be argued that since section 54 does not lead to prosecution

and court proceedings, as is the case with section 160(1), the drain on police resources may be less rather than more. Thirdly, we believe that the doubts as to interpretation of section 54 to which the sub-committee alluded do not amount to significant difficulties.

8.14 Finally, we are unconvinced by the suggestion that section 2(5) of the English Criminal Law Act 1967 provides greater powers to the police than section 54 of the Police Force Ordinance. While section 2(5) makes no reference to "necessity" (unlike section 54), it may be argued that section 54 confers wider powers than s. 2(5). Under section 2(5) a police officer may arrest any person whom he with reasonable cause suspects to be about to commit an **arrestable** offence. Under section 54 a police officer may if necessary arrest any person who acts in a suspicious manner. Acting in a suspicious manner would embrace a wider range of conduct than being about to commit an arrestable offence.

8.15 In our view, section 54 achieves the basic objectives of the loitering law, without some of the objectionable features of that law. It shares many of the positive aspects of s.160(1). It gives the police power to take preventive measures to curtail crime. It enables them to prevent the commission of crimes in circumstances where no offence has actually been committed, but where the conduct of the suspect gives cause for suspicion that an offence may be about to be committed (see para. 2.3 above). It enables the individual officer to act on his own observations, rather than on the complaint of a member of the public (see para. 3.9 above). To the extent that the exercise of police powers under s. 160(1) leads to the detection of more serious offences (see para. 5.21 above), that objective may also be achieved under section 54 since under it a person may be stopped, searched and questioned (and his identity verified under Cap. 115).

8.16 If a police officer saw a person touching the pockets or handbags of persons in crowded conditions, or looking into vehicles and trying their door handles, or peeping into or trying the doors or gates of buildings, or pressing his body against a woman in a crowd (see para. 3.10 above), he would be justified in exercising his power under section 54 to stop and search the person on the ground that the person was acting in a suspicious manner, and/or the officer suspected him of having committed or of being about to commit or of intending to commit an offence (theft, burglary, robbery, assault). Having stopped and searched him, the police officer might, if necessary, arrest and detain him for further enquiries. Section 54 gives the police wider preventive powers than section 160(1), in the sense that it gives a power to stop and search prior to an arrest (see para. 3.19 above). Section 54 and existing Hong Kong law (aside from s.160(1)) would give the police the power to take effective preventive action which the overwhelming majority of correspondents in the telephone survey favoured (see para. 5.14 above).

8.17 In at least one respect, the powers of section 54 are wider than those of section 160(1). Section 54 empowers a police officer to arrest and detain any person who acts in a suspicious manner. The test for determining this appears to be a purely subjective one (Attorney General v. Kong

Chung-shing [1980] HKLR 533). The only limitation is that such arrest and detention be "necessary", though it is not entirely clear what this means. (Does it mean necessary in order to carry out the search, or necessary in the sense that the need for an arrest has arisen out of a reasonable suspicious that an offence has been committed? – see para. 8.10 above.) The breadth of the power conferred becomes clear when one considers that as a general rule persons are only liable to arrest where they are reasonably suspected of having committed an offence (see Police Force Ordinance, Cap 232, s.50(1)). Section 160(1), on the other hand, as it now stands, only empowers a police officer to arrest a person who was loitering in circumstances which reasonably suggest that its purpose is other than innocent (SHAM Chuen) and who fails to give a satisfactory account of himself and a satisfactory explanation for his presence there. These pre-conditions are arguably more restrictive than the test under section 54 of acting in a suspicious manner. Under the sub-committee's proposed amendment (see para. 7.4 above), the power under section 160(1) would be even more restricted since there would be the additional requirement of circumstances that reasonably suggest that his purpose is the commission of an arrestable offence.

8.18 Section 54 can achieve the object of crime prevention at less cost to the integrity of the legal system than can section 160(1).

It does not abridge the right of silence enjoyed by a suspect, by compelling answers to enquiries under a form of statutory compulsion (see paras. 2.1, 3.5, 3.9, 3.16, 4.15 – 4.19, 5.6 – 5.7 and 7.23 above)

It does not alter the presumption of innocence (see para. 7.23 above).

It does not impinge upon the privilege against self-incrimination (see paras. 4.15 – 4.19, 7.17 – 7.20 and 7.23 above).

It does not effect a shift in the burden of proof away from the prosecution on to the accused, at either the investigative stage (see paras. 4.17, 4.19 and 5.6 above) or the prosecution stage (see paras. 6.16 and 7.16 above).

It does not carry the risk that persons who are unable or unwilling to explain themselves may incur criminal liability solely or predominantly on that account, since an inability to give an explanation would not (as it may do under s.160(1)) form the basis of a criminal charge, without other grounds of suspicion (see paras. 2.1, 3.20, 5.7 and 5.18 above). At the same time, it would offer the same opportunity to an innocent person to explain his conduct as section 160(1), and should therefore not lead to the needless arrest of innocent individuals who have a plausible explanation for suspicious conduct (see para. 2.7 above).

It does not, by making a crime out of behaviour which falls short of an attempt, expand the definition of crime to embrace behaviour that is on the margin of innocence (see paras. 2.1 and 8.5 above)

It does not create a crime which is totally victimless, for the prosecution of which no factual elements need to be proved by an independent witness or victim (see paras. 3.8, 4.11, 5.33, 6.17 and 8.6 above).

It does not create a crime whose only objectively verifiable ingredients are (a) being in a public place, (b) in circumstances which reasonably suggest that its purpose is other than innocent. The latter ingredient is itself heavily dependent on the subjective assessment of the police officer. The third ingredient of the offence under section 160(1) – whether the police officer was satisfied by the account and explanation given by the person – is also subjective (see paras. 2.2, 3.9, 4.17, 5.7, 6.16 and 8.6 above).

It does not create a crime for which punishment is given not for any damage or injury inflicted or attempted, but for causing a police officer to believe that one is contemplating a crime (see paras. 3.9, 6.15 and 6.18 above).

It does not lead to prosecuting a person where there is insufficient evidence to charge an attempt (see para. 6.19 above).

It does not involve the paradox of seeking to prevent crime by making criminals out of people who would not otherwise be criminals (see paras. 3.2 and 3.9 above).

It raises fewer questions as to possible infringement of the rights guaranteed by the International Covenant on Civil and Political Rights (see paras. 2.1, 7.8 and 7.23 above), and as a corollary would have fewer implications as regards the proposed Hong Kong Bill of Rights Ordinance, 1990. (A question may arise in respect of arbitrary arrest or detention under Article 9(1) of the Covenant and Article 5(1) of the Bill).

It is less open to general abuse than s.160(1) because even though the conduct that might lead to an arrest is not required to be criminal (an officer is empowered to arrest a person who “acts in a suspicious manner”) – such conduct will not, unlike in the case of s.160(1), result in criminal proceedings unless, following the arrest, there is evidence of a criminal offence (see paras. 3.8, 4.12 and 8.6 above).

It does not foster the notion that potential criminals are criminals, nor induce the police to regard the criminal prosecutorial apparatus as being an appropriate means of preventing crime (as opposed to punishing criminals) as does s.160(1) (see para. 3.9 above).

It would be in line with the practice of other jurisdictions (see paras. 2.1 and 6.9 above).

It is less open to attack as being draconian (see para. 3.5 above), and is less likely than s.160(1) to lead to strained relations between the police and the public (see paras 5.33 – 5.35, and 6.18 and 6.20 above).

8.19 Any possible recurrence of gangs or groups of thugs or bullies behaving in an offensive or menacing way, without actual physical aggression, which was the problem that apparently led to the introduction of section 160 (see paras. 2.4 – 2.6, 3.2 and 4.4 above) would, in our view, be adequately catered for by subsections (2) and (3) of section 160, which we would retain as unobjectionable (see paras. 3.2, 3.8 and 3.13 above), even though there have been few prosecutions under those subsections (see paras. 3.8, 3.21, 4.10, 5.15 and 5.32).

Our recommendations

8.20 We have considered the three options outlined in chapter 7 (at para 7.1) and have concluded that the objections to section 160(1) so far outweigh its effectiveness as a crime prevention measure that its retention in either present or a modified form is undesirable. Accordingly, we have concluded that section 160(1) should be repealed. We have reached this conclusion taking account of the existence of section 54 of the Police Force Ordinance which we consider to provide a realistic alternative.

8.21 Neither we nor the sub-committee are aware of dissatisfaction having been voiced at the operation of sub-sections (2) and (3) of section 160. We propose that they should remain unchanged.

8.22 **We therefore recommend that: -**

(i) section 160(1) of the Crimes Ordinance should not be retained, either in its present or in an amended form.

(ii) section 160(1) should be repealed outright without the enactment of any replacement provision; and

(iii) section 160(2) and (3) should be retained in their present form.

Chapter 9

The minority view

9.1 The Commission unanimously accepts the conclusion of the sub-committee that section 160(1) of the Crimes Ordinance is unacceptable in its present form and accepts that sections 160(2) and (3) should be retained. These latter two subsections are required to deal with intimidation by criminal gangs, and have not been the subject of great criticism.

9.2 A minority within the Commission's membership accepts the recommendations of the sub-committee that it should be an offence to loiter in circumstances that reasonably suggest that the loiterer's purpose is to commit a serious offence (that is, an arrestable offence) unless he gives a satisfactory explanation to a police officer.

9.3 The minority accepts the conclusions and reasoning of the sub-committee. It agrees with the majority of the Commission that section 160(1) and its proposed replacement is open to abuse. This is true of many criminal provisions and there is always a danger that a police officer will mis-state or exaggerate his evidence. The possibility of abuse is not sufficient reason for removing the offence. Section 160(1) in the form proposed would allow a police officer to intervene effectively by questioning and if appropriate arresting and charging the loiterer in circumstances where the public perceive intervention is warranted. This proposed replacement for section 160(1) improves the existing provision by providing a second opportunity for an explanation to be given in court thereby avoiding the well founded criticism that the present law removes the right of silence. The burden and standard of proof also remain for the protection of an accused person.

9.4 The sub-committee's proposed amendment to section 160(1) provides powers for crime prevention which are necessary in the social conditions in Hong Kong.

9.5 The alternative relied upon and preferred by the majority of the Law Reform Commission is the use of the power under section 54 of the Police Force Ordinance, Cap 232. It is arguable, however, that this is more open to abuse than the loitering offence and would be ineffective since:

(a) It permits intrusion by stopping and searching on mere and subjective suspicion by a police officer rather than upon "reasonable" suspicion.

(b) Following the stopping and searching the power of arrest arises "if necessary". The construction of these words gives rise to

conflicting views. A construction likely to find favour is that the power of arrest only arises when it is impossible otherwise to carry out the powers granted. Only then would arrest be necessary".

(c) There is no time limit on the enquiries that may be conducted;

(d) If there is no loitering offence, the suspect could not be charged even if he admitted that he was about to commit a serious crime. He could be questioned but would then have to be released. The arrest would not be subject to review by the court or by an inspector of police under the Police Order relating to loitering arrests.

(e) Often those about to commit offences do not carry evidence of this upon them. In such circumstances stopping and searching may not be sufficient protection for potential victims.

Annexure 1

REPORT ON A SURVEY ON THE LOITERING LAW BY THE COMMUNITY INFORMATION DIVISION OF THE CITY AND NEW TERRITORIES ADMINISTRATION

CONTENTS

I. Introduction

1. A Sub-Committee on Loitering was established by the Law Reform Commission to study "whether the law relating to the offences of loitering contained in section 160 of the Crimes Ordinance should be amended and, if so, what changes should be made". As part of its public consultation exercise, the Sub-Committee decided to conduct a survey to gauge public opinion on the subject and requested the City and New Territories Administration to assist in carrying out the survey.

II. Objective

2. The objective of the survey is to find out people's views and perception of the present law of loitering. The target population is people aged 18 and over living in the territory.

III. Method of data collection

3. The survey was carried out in the name of the City and New Territories Administration Headquarters. Telephone interviews were conducted between 1800 – 2200 hours during the period 8 August to 12 August 1988. The survey was based on a systematic random sample of residential telephone numbers from current telephone directories. Within the household(s) of a selected telephone number, a respondent aged 18 or over was selected randomly for interview. App. I shows the English and Chinese versions of the questionnaire.

IV. Rate of response

4. Of the 2790 telephone calls made, 2167 households were successfully contacted, representing a contact rate of 78%. The unsuccessful calls of 623 were mainly cases where telephones were disconnected/out of order or nobody answered the phones after three attempts were made at different times and no different dates. Among the contacted households, 1363 respondents aged 18 or over were successfully interviewed, representing a completion rate of 63%. Of the remaining, 350 (16%) were partial response or refusal cases and 454 (21%) were cases where the randomly selected respondents could not be contacted for various reasons.

5. In a sample of this size (i.e. 1363), one can say with 95% confidence that the sample percentage would differ from the true percentage by, at most, plus or minus 2.7 percentage points.

V. Data processing

6. The completed questionnaires were coded and edited by experienced coders. Validation of data, to eliminate errors in coding and editing, and statistical tabulation were done by computer.

VI. Limitations

7. The following limitations of the survey should be noted:

(i) Only households with telephones are covered in this survey. About 10% of households in Hong Kong do not have telephones. These households usually belong to the lower income group. It is likely that people in this group may be under-represented in the survey.

(ii) As only simple questions can be asked over the phone, some questions may be regarded as over-simplified.

(iii) The views expressed by some respondents may be superficial because not many respondents are likely to be concerned about or have personal knowledge or experience of the issues in question.

Nevertheless, it is thought that the survey results should provide useful reference materials on how people react to the present law. Useful purpose will be served when the survey results are considered in conjunction with information obtained from other sources.

VII. Findings

8. In spite of the limitation mentioned in para. 7(i), the characteristics of the sample of 1363 respondents, in terms of age, sex, educational level, occupation, and housing type, were similar to those of a sample of 50,000 persons covered in the General Household Survey conducted by the Census & Statistics Department in the first quarter of 1988. (Annex II refers)

(i) Knowledge of people's right of silence and the police's general power to stop and search

9. When the respondents were asked whether generally speaking a citizen could refuse to answer questions put to him by a policeman, 57% said "yes, he can refuse", 22% said "no, he can't refuse", and 21% gave "don't know" answers. Generally speaking, respondents of younger age or with higher education tended to say "yes". (Table 1 refers)

10. In response to the question "Do the police have the general power to stop and search a person acting suspiciously in a public place, and if necessary to arrest him?", 84% of the respondents said "yes, have the power", 9% said "no, have no power", and 7% gave "don't know" answers. (Table 2 refers)

(ii) Knowledge of the loitering ordinance

11. The following questions on knowledge of the loitering ordinance were directed to the respondents:

(a) "Is a policeman allowed by law to arrest a person who loiters in a public place and acts suspiciously?"

(b) "When such a person is requested by a policeman to identify himself and explain his conduct in a public place, does the person have or not have the right by law to refuse to answer the questions?"

(c) "If the person fails to give a satisfactory explanation for his conduct to the policeman, has or hasn't he committed an offence?"

12. 61% of the respondents said that "the police is allowed by law to arrest a person who loiters in a public place and acts suspiciously", 25% said "it is not allowed", and 14% gave "don't know" answers. (Table 3 refers)

13. "When such a person is requested by a policeman to identify himself and explain his conduct", 47% of the respondents said the person "has no right to refuse to answer the questions", whereas 41% said "the person has the right to refuse to answer the questions" and 12% gave "don't know" answers. (Table 4 refers)

14. 49% of the respondents said that the person "has not committed an offence if he fails to give a satisfactory explanation for his conduct to the policeman", 19% said the person "has probably committed an offence" and 15% said, "the person has definitely committed an offence". 17% of the respondents gave "don't know" answers. Generally speaking, respondents of younger age, with higher education or who were studying tended to say "no, the person has not committed an offence". (Table 5 refers)

15. The following table shows the percentage distribution of respondents by their answers to the three questions (Q.3 to Q.5) on the loitering ordinance. It can be seen that only 15% (ie 8% + 7%) of them can be considered as knowledgeable about the existing law.

Is a policeman allowed by law to arrest a person who loiters and acts suspiciously (Q.3)	Does the person has the right to refuse to answer the questions put to him by the policeman (Q.4)	Has the person committed an offence if he fails to explain his conduct (Q.5)				Total
		Yes, definitely an offence	Yes, probably an offence	No, no offence committed	Don't know	
		%	%	%	%	%
Yes, is allowed	Yes, has the right	4	5	15	3	27
	No, has no right	8	7	12	3	30
	Don't know	*	1	2	2	5
No, is not allowed	Yes, has the right	1	2	7	1	11
	No, has no right	1	2	8	1	12
	Don't know	*	*	1	*	1
Don't know	Yes, has the right	1	*	1	1	3
	No, has no right	*	1	2	2	5
	Don't know	*	1	1	4	6
Total (Q.5)		15	19	49	17	100

(Base: No. of respondents = 1363)
*Less than 0.5%

(iii) Effectiveness in crime prevention

16. Having asked questions on the respondents' knowledge of the loitering ordinance, interviewers were instructed to give a standard brief explanation of the ordinance to the respondents (page 3 of the questionnaire refers). With such a background knowledge, the respondents were asked to express their views on some issues concerning the ordinance.

17. The respondents were asked whether the incidence of crime could be reduced with the present ordinance. 65% of them said that "crimes can be reduced", 22% said "crimes cannot be reduced", and 13% gave "don't know/no comment" answers. (Table 6 refers)

18 The following table shows the percentage distribution of respondents by their answers to this question (Q.6) and Question 2 ("whether the police have the general power to stop and search?"). It can be seen that 57% of the respondents noted that the police had the general power to stop and search and said that crimes could be reduced with the loitering ordinance, whereas 18% noted that the police had the general power to stop and search but said that crimes could not be reduced with the loitering ordinance.

Whether the police have the general power to stop and search a person acting suspiciously in a public place and to arrest him if necessary (Q.2)	Whether the incidence of crime can be reduced with the loitering ordinance (Q.6)			Total (Q.2)
	can be reduced	cannot be reduced	Don't know/ no comment	
	%	%	%	%
Yes, have the power	57	18	9	84
No, have no power	5	3	1	9
Don't know	3	1	3	7
Total (Q.6)	65	22	13	100

(iv) Criticisms of the law

19. Two statements which criticized the present ordinance were read out to respondents who were asked whether they agreed with them. The first statement was

> "This law compels a person to answer and policemen's injury in a public place and therefore this infringes his freedom to remain silent."

47% of the respondents agreed with the statement, and 40% disagreed. The remaining 13% gave "don't know/no comment" answers. (Table 7 refers)

20. It can be seen from the following table that while slightly more people agreed with this statement (47% agreed vs 40% disagreed), a higher percentage who disagreed is found among people who had previously held the view that a person generally could not refuse to answer questions put to him by a policeman (8% agreed vs 12% disagreed):

Whether generally speaking a person can refuse to answer questions put to him by a policeman (Q.1)	Whether agree that "this law compels a person to answer policeman's inquiry in a public place and this infringes his freedom to remain silent" (Q.7)			Total (Q.1)
	Agree	Disagree	Don't know/ no comment	
	%	%	%	%
Yes, he can refuse	31	22	4	57
No, he can't refuse	8	12	2	22
Don't know	8	6	7	21
Total (Q.7)	47	40	13	100

21. The second statement was

> "This law is too harsh because a person who fails to give a satisfactory explanation to the policeman through shame or panic may be guilty of an offence even though he has in fact a satisfactory explanation."

49% of the respondents agreed with it, 40% disagreed and 11% gave "don't know/no comment" answer. (Table 8 refers).

22. Cross-tabulation of the answers to this question (Q.8) and Question 1 (following table) shows that, among those who held that a person could not refuse to answer questions put to him by a policeman, about the same percentage of people agreed (11%) or disagreed (10%) with the statement, whereas for the overall sample slightly more people agreed (49% agreed vs 40% disagreed).

Whether generally speaking a person can refuse to answer questions put to him by a policeman (Q.1)	Whether agree that "this law is too harsh because a person who fails to give a satisfactory explanation to the policeman through shame or panic may be guilty of an offence even though he has in fact a satisfactory explanation" (Q.8)			Total (Q.1)
	Agree	Disagree	Don't know/ no comment	
	%	%	%	%
Yes, he can refuse	30	24	3	57
No, he can't refuse	11	10	1	22
Don't know	8	6	7	21
Total (Q.8)	49	40	11	100

23. The respondents were further asked whether they were worried that the power given to policeman by this ordinance to arrest people loitering in public places might be abused. 59% said they were worried, 32% not worried, and 9% gave "don't know/no comment" answers. Generally speaking, respondents with higher education tended to say "worried". (Table 9 refers)

(v) <u>Reaction to specific cases</u>

24. The respondents were asked to express their views on five specific cases, as follows:

Case 1: In a crowded street, a policeman saw a person touching other person's pocket and handbags for a number of times.

Case 2: A policeman saw a person peeping into and tampering with the doors or gates of a number of buildings in a row.

Case 3: A policeman saw a person trying the door handles of parked vehicles on the street.

Case 4: A policeman saw a man walking to and fro in opposite directions in a street and then following a woman into a building.

Case 5: A policeman saw a man waiting at a bus stop for a long time without boarding any of the buses.

On each case, the following questions were asked:

(i) “Do you think the policeman should be able to require the person to identify himself and explain for his conduct?”

(ii) “(If answer to (i) is yes) Do you think the policeman should be able to arrest the person if he fails to give a satisfactory explanation?”

The answers are summarized in the following table (detailed tabulations are in Tables 10 – 14):

Views on the case	Case 1 In a crowded street, a policeman saw a person touching other persons' pockets and handbags for a number of times.	Case 2 A policeman saw a person peeping into and tampering with the doors or gates of a number of buildings in a row.	Case 3 A policeman saw a person trying the door handles of parked vehicles on the street.	Case 4 A policeman saw a man walking to and fro in opposite directions in a street and then following a woman into a building.	Case 5 A policeman saw a man waiting at a bus stop for a long time without boarding any of the buses.
	%	%	%	%	%
The policeman should be able to require the person to identify himself and explain for his conduct	96	97	95	79	45
If the person fails to give a satisfactory explanation,					
The policeman should be able to arrest him	83	81	80	61	27
The policeman should not be able to arrest him	9	12	11	13	15
Don't know/ no comment	4	4	4	5	3
The policeman should not be able to require the person to identify himself and explain for his conduct	2	1	2	15	50
Don't know/ no comment	2	2	3	6	5
Total	100	100	100	100	100
(Base: No. of respondents)	(1363)	(1363)	(1363)	(1363)	(1363)

25. On Cases 1 to 3, more than 95% of the respondents said that "the policeman should be able to require the person to identify himself and explain for his conduct", and more than 80% said that "the policeman should be able to arrest the person if he fails to give a satisfactory explanation". Only 1% to 2% of respondents replied negatively to the first question.

26. On Case 4, 79% of the respondents said "the policeman should be able to require the person to identify himself and explain for his conduct", and 61% said that "the policeman should be able to arrest the person if he fails to give a satisfactory explanation". 15% of respondents replied negatively to the first question.

27. On Case 5, 50% of the respondents said that "the policeman should not be able to require the person to identify himself and explain for his conduct". Slightly less people (45%) said that "the policeman should be able to require the person to identify himself and explain for his conduct", and about a quarter (27%) said that "the policeman should be able to arrest the person if he fails to give a satisfactory explanation".

VIII. Summary of findings

28. 57% of the respondents said that generally speaking a citizen could refuse to answer questions put to him by a policeman. 84% said the police had the general power to stop and search a person acting suspiciously in a public place and if necessary to arrest him.

29. Only 15% of the respondents could be considered as knowledgeable about the loitering law.

30. 65% of the respondents said that the incidence of crime could be reduced with the present loitering law.

31. Nearly half of the respondents agreed with the following two statements:

(i) "This (loitering) law compels a person to answer policeman's inquiry in a public place and therefore this infringes his freedom to remain silent." (47%)

(ii) "This (loitering) law is too harsh because a person who falls to give a satisfactory explanation to the policeman through shame or panic may be guilty of an offence even though he has in fact a satisfactory explanation." (49%)

32. 59% of the respondents said they were worried that the power given to policeman by this ordinance to arrest people loitering in public place might be abused.

33. In response to all specific cases but one (Case 5), the majority of respondents asserted that the policeman should be able to require the person to identify himself and explain for his conduct and that the policeman should be able to arrest the person if he failed to give a satisfactory explanation.

Opinion Survey Unit
Community Information Division
City and New Territories Administration
September 1988

Table 1: Percentage distribution of respondents by whether generally speaking a person can refuse to answer questions put to him by a policeman (Q.1)

	Yes, he can refuse %	No, he can't refuse %	Don't know %	Total %	(No. of respondents)
(a) OVERALL	57	22	21	100	(1363)
(b) AGE					
18 – 29	70	18	12	100	(355)
30 – 39	62	21	17	100	(489)
40 – 49	52	27	21	100	(233)
50 and over	37	27	36	100	(286)
(c) SEX					
Male	57	26	17	100	(692)
Female	57	19	24	100	(671)
(d) EDUCATION					
No formal education	24	25	51	100	(167)
Primary	50	23	27	100	(386)
Lower secondary	60	22	18	100	(234)
Upper secondary	68	24	8	100	(424)
Post secondary or above	78	12	10	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	81	13	6	100	(84)
Administrative & managerial workers	69	18	13	100	(45)
Clerical & related workers	74	19	7	100	(181)
Sales workers	68	24	8	100	(79)
Service workers	42	30	28	100	(107)
Production & related workers, transport equipment operators and labourers	49	27	24	100	(446)
Housewives	53	19	28	100	(320)
Students	80	13	7	100	(30)
Others	48	22	30	100	(69)
(f) TYPE OF HOUSING					
Public housing	54	24	22	100	(547)
Private housing	61	22	17	100	(731)
Temporary housing	44	15	41	100	(78)

(i) Figures may not add up to 100% because of rounding.
(ii) The overall figure includes respondents whose personal characteristics are known.
(iii) *less than 0.5%

Table 2: Percentage distribution of respondents by whether the police have the general power to stop and search a person acting suspiciously in a public place and to arrest him if necessary (Q.2)

	Yes, have the power %	No, have no power %	Don't know %	Total %	(No. of respondents)
(a) OVERALL	84	9	721	100	(1363)
(b) AGE					
18 – 29	87	10	3	100	(355)
30 – 39	87	8	5	100	(489)
40 – 49	83	12	5	100	(233)
50 and over	76	8	16	100	(286)
(c) SEX					
Male	86	10	4	100	(692)
Female	82	8	10	100	(671)
(d) EDUCATION					
No formal education	68	6	26	100	(167)
Primary	86	5	9	100	(386)
Lower secondary	86	10	4	100	(234)
Upper secondary	88	11	1	100	(424)
Post secondary or above	79	18	3	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	85	14	1	100	(84)
Administrative & managerial workers	73	22	5	100	(45)
Clerical & related workers	88	10	2	100	(181)
Sales workers	89	10	1	100	(79)
Service workers	79	11	10	100	(107)
Production & related workers, transport equipment operators and labourers	85	8	7	100	(446)
Housewives	82	6	12	100	(320)
Students	80	17	3	100	(30)
Others	78	7	15	100	(69)
(f) TYPE OF HOUSING					
Public housing	84	8	8	100	(547)
Private housing	84	10	6	100	(731)
Temporary housing	78	8	14	100	(78)

Table 3: Percentage distribution of respondents by whether a policeman is allowed by law to arrest a person who loiters in a public place and acts suspiciously (Q.3)

	Yes, is allowed %	No, is not allowed %	Don't know %	Total %	(No. of respondents)
(a) OVERALL	61	25	14	100	(1363)
(b) AGE					
18 – 29	65	27	8	100	(355)
30 – 39	64	24	12	100	(489)
40 – 49	57	29	14	100	(233)
50 and over	58	19	23	100	(286)
(c) SEX					
Male	62	26	12	100	(692)
Female	62	23	15	100	(671)
(d) EDUCATION					
No formal education	56	16	28	100	(167)
Primary	57	26	17	100	(386)
Lower secondary	65	22	13	100	(234)
Upper secondary	68	26	6	100	(424)
Post secondary or above	57	32	11	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	62	27	11	100	(84)
Administrative & managerial workers	55	36	9	100	(45)
Clerical & related workers	71	23	6	100	(181)
Sales workers	61	26	13	100	(79)
Service workers	60	27	13	100	(107)
Production & related workers, transport equipment operators and labourers	58	27	15	100	(446)
Housewives	63	20	17	100	(320)
Students	73	23	3	100	(30)
Others	56	22	22	100	(69)
(f) TYPE OF HOUSING					
Public housing	60	25	15	100	(547)
Private housing	63	25	12	100	(731)
Temporary housing	60	19	21	100	(78)

Table 4: Percentage distribution of respondents by whether a person who loiters in a public place has the right by law to refuse to answer the questions when he is requested by a policeman to identify himself and explain for his conduct in a public place (Q.4)

		Yes, has the right %	No, has no right %	Don't know %	Total %	(No. of respondents)
(a)	OVERALL	41	47	12	100	(1363)
(b)	AGE					
	18 – 29	49	46	5	100	(355)
	30 – 39	41	48	11	100	(489)
	40 – 49	36	51	13	100	(233)
	50 and over	35	43	22	100	(286)
(c)	SEX					
	Male	41	49	10	100	(692)
	Female	41	45	14	100	(671)
(d)	EDUCATION					
	No formal education	32	39	29	100	(167)
	Primary	37	46	17	100	(386)
	Lower secondary	41	47	12	100	(234)
	Upper secondary	45	51	4	100	(424)
	Post secondary or above	49	45	6	100	(152)
(e)	OCCUPATION					
	Professional, technical & related workers	49	48	3	100	(84)
	Administrative & managerial workers	44	49	7	100	(45)
	Clerical & related workers	51	45	4	100	(181)
	Sales workers	39	48	13	100	(79)
	Service workers	40	51	9	100	(107)
	Production & related workers, transport equipment operators and labourers	39	49	12	100	(446)
	Housewives	39	42	19	100	(320)
	Students	43	50	7	100	(30)
	Others	33	44	23	100	(69)
(f)	TYPE OF HOUSING					
	Public housing	42	47	11	100	(547)
	Private housing	41	47	12	100	(731)
	Temporary housing	44	38	18	100	(78)

Table 5: Percentage distribution of respondents by whether a person who loiters in a public place has committed an offence if he fails to give a satisfactory explanation for his conduct to the policeman (Q.5)

	Yes, definitely an offence %	Yes, probably an offence %	No, no offence committed %	Don't know %	Total %	(No. of respondents)
(a) OVERALL	15	19	49	17	100	(1363)
(b) AGE						
18 – 29	15	15	62	8	100	(355)
30 – 39	14	19	51	16	100	(489)
40 – 49	15	22	43	19	100	(233)
50 and over	18	21	34	27	100	(286)
(c) SEX						
Male	15	20	49	16	100	(692)
Female	16	18	49	17	100	(671)
(d) EDUCATION						
No formal education	20	17	21	42	100	(167)
Primary	17	19	42	22	100	(386)
Lower secondary	16	18	55	11	100	(234)
Upper secondary	14	20	58	8	100	(424)
Post secondary or above	10	19	64	7	100	(152)
(e) OCCUPATION						
Professional, technical & related workers	16	20	56	8	100	(84)
Administrative & managerial workers	20	18	53	9	100	(45)
Clerical & related workers	12	22	57	9	100	(181)
Sales workers	15	23	47	15	100	(79)
Service workers	15	18	50	17	100	(107)
Production & related workers, transport equipment operators and labourers	17	17	46	20	100	(446)
Housewives	15	21	44	20	100	(320)
Students	13	10	77	0	100	(30)
Others	12	17	45	26	100	(69)
(f) TYPE OF HOUSING						
Public housing	15	19	48	18	100	(547)
Private housing	15	19	51	15	100	(731)
Temporary housing	18	10	42	30	100	(78)

Table 6: Percentage distribution of respondents by whether the incident of crime can be reduced with this (loitering) law (Q.6)

		Can be reduced %	Cannot be reduced %	Don't know / no comment %	Total %	(No. of respondents)
(a)	OVERALL	65	22	13	100	(1363)
(b)	AGE					
	18 – 29	63	30	7	100	(355)
	30 – 39	65	25	10	100	(489)
	40 – 49	70	15	15	100	(233)
	50 and over	64	12	24	100	(286)
(c)	SEX					
	Male	64	25	11	100	(692)
	Female	66	19	15	100	(671)
(d)	EDUCATION					
	No formal education	56	10	34	100	(167)
	Primary	69	16	16	100	(386)
	Lower secondary	64	25	11	100	(234)
	Upper secondary	65	29	6	100	(424)
	Post secondary or above	69	26	5	100	(152)
(e)	OCCUPATION					
	Professional, technical & related workers	80	15	5	100	(84)
	Administrative & managerial workers	67	22	11	100	(45)
	Clerical & related workers	63	32	5	100	(181)
	Sales workers	65	24	11	100	(79)
	Service workers	65	22	13	100	(107)
	Production & related workers, transport equipment operators and labourers	63	23	14	100	(446)
	Housewives	68	15	17	100	(320)
	Students	70	27	3	100	(30)
	Others	58	19	23	100	(69)
(f)	TYPE OF HOUSING					
	Public housing	67	22	11	100	(547)
	Private housing	65	23	12	100	(731)
	Temporary housing	50	17	33	100	(78)

Table 7: Percentage distribution of respondents by whether the respondents agreed that "this (loitering) law compels a person to answer policeman's inquiry in a public place and this infringes his freedom to remain silent" (Q.7)

	Agree %	Disagree %	Don't know / no comment %	Total %	(No. of respondents)
(a) OVERALL	47	40	13	100	(1363)
(b) AGE					
18 – 29	57	38	5	100	(355)
30 – 39	51	37	12	100	(489)
40 – 49	42	45	13	100	(233)
50 and over	34	43	23	100	(286)
(c) SEX					
Male	52	38	10	100	(692)
Female	43	42	15	100	(671)
(d) EDUCATION					
No formal education	31	34	35	100	(167)
Primary	45	41	14	100	(386)
Lower secondary	52	37	11	100	(234)
Upper secondary	52	41	7	100	(424)
Post secondary or above	54	43	3	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	49	46	5	100	(84)
Administrative & managerial workers	58	33	9	100	(45)
Clerical & related workers	53	44	3	100	(181)
Sales workers	51	35	14	100	(79)
Service workers	42	43	15	100	(107)
Production & related workers, transport equipment operators and labourers	51	37	12	100	(446)
Housewives	43	39	18	100	(320)
Students	43	50	7	100	(30)
Others	32	45	23	100	(69)
(f) TYPE OF HOUSING					
Public housing	48	39	13	100	(547)
Private housing	48	41	11	100	(731)
Temporary housing	42	33	24	100	(78)

Table 8: Percentage distribution of respondents by whether the respondents agreed that "this (loitering) law is too harsh because a person who fails to give a satisfactory explanation to the policeman through shame or panic may be guilty of an offence even though he has in fact a satisfactory explanation" (Q.8)

	Agree %	Disagree %	Don't know/ no comment %	Total %	(No. of respondents)
(a) OVERALL	49	40	11	100	(1363)
(b) AGE					
18 – 29	56	39	5	100	(355)
30 – 39	51	40	9	100	(489)
40 – 49	45	44	11	100	(233)
50 and over	39	38	23	100	(286)
(c) SEX					
Male	49	41	10	100	(692)
Female	49	39	12	100	(671)
(d) EDUCATION					
No formal education	37	30	33	100	(167)
Primary	46	41	13	100	(386)
Lower secondary	53	39	8	100	(234)
Upper secondary	51	44	5	100	(424)
Post secondary or above	54	41	5	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	52	43	5	100	(84)
Administrative & managerial workers	56	33	11	100	(45)
Clerical & related workers	52	44	4	100	(181)
Sales workers	61	32	7	100	(79)
Service workers	43	47	10	100	(107)
Production & related workers, transport equipment operators and labourers	50	39	11	100	(446)
Housewives	45	38	17	100	(320)
Students	40	53	7	100	(30)
Others	39	39	22	100	(69)
(f) TYPE OF HOUSING					
Public housing	44	45	11	100	(547)
Private housing	52	38	10	100	(731)
Temporary housing	50	31	19	100	(78)

Table 9: Percentage distribution of respondents by whether the respondents were worried that the power given to policeman to arrest people loitering in public places might be abused (Q.9)

	Worried %	Not worried %	Don't know/ no comment %	Total %	(No. of respondents)
(a) OVERALL	59	32	9	100	(1363)
(b) AGE					
18 – 29	64	33	3	100	(355)
30 – 39	63	28	9	100	(489)
40 – 49	60	30	10	100	(233)
50 and over	43	38	19	100	(286)
(c) SEX					
Male	61	32	7	100	(692)
Female	57	31	12	100	(671)
(d) EDUCATION					
No formal education	38	30	32	100	(167)
Primary	55	33	12	100	(386)
Lower secondary	59	34	7	100	(234)
Upper secondary	65	32	3	100	(424)
Post secondary or above	71	26	3	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	70	30	0	100	(84)
Administrative & managerial workers	69	29	2	100	(45)
Clerical & related workers	70	28	2	100	(181)
Sales workers	61	32	7	100	(79)
Service workers	54	33	13	100	(107)
Production & related workers, transport equipment operators and labourers	59	30	11	100	(446)
Housewives	53	35	12	100	(320)
Students	50	47	3	100	(30)
Others	43	32	25	100	(69)
(f) TYPE OF HOUSING					
Public housing	56	34	10	100	(547)
Private housing	62	30	8	100	(731)
Temporary housing	49	34	17	100	(78)

Table 10: Case 1: In a crowded street, a policeman saw a person touching other persons' pockets and handbags for a number of times.

(a): Percentage distribution of respondents by whether the respondents thought the policeman should be able to require the person to identify himself and explain for his conduct (Q.10a)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a)	OVERALL	96	2	2	100	(1363)
(b)	AGE					
	18 – 29	98	2	*	100	(355)
	30 – 39	95	3	2	100	(489)
	40 – 49	97	2	1	100	(233)
	50 and over	92	2	6	100	(286)
(c)	SEX					
	Male	96	2	2	100	(692)
	Female	95	2	3	100	(671)
(d)	EDUCATION					
	No formal education	89	1	10	100	(167)
	Primary	97	2	1	100	(386)
	Lower secondary	95	3	2	100	(234)
	Upper secondary	98	1	1	100	(424)
	Post secondary or above	96	3	1	100	(152)
(e)	OCCUPATION					
	Professional, technical & related workers	96	4	0	100	(84)
	Administrative & managerial workers	100	0	0	100	(45)
	Clerical & related workers	98	1	1	100	(181)
	Sales workers	96	4	0	100	(79)
	Service workers	94	1	5	100	(107)
	Production & related workers, transport equipment operators and labourers	96	2	2	100	(446)
	Housewives	94	3	3	100	(320)
	Students	100	0	0	100	(30)
	Others	93	3	4	100	(69)
(f)	TYPE OF HOUSING					
	Public housing	96	2	2	100	(547)
	Private housing	96	2	2	100	(731)
	Temporary housing	92	3	5	100	(78)

(Table 10 cont'd)

(b): Percentage distribution of respondents by whether the respondents thought the policeman should be able to arrest the person if he failed to give a satisfactory explanation (Q. 10b)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know / no comment %	Total %	(No. of respondents)
(a)	OVERALL	87	9	4	100	(1305)
(b)	AGE					
	18 – 29	86	13	1	100	(348)
	30 – 39	92	5	3	100	(467)
	40 – 49	83	10	7	100	(227)
	50 and over	82	11	7	100	(263)
(c)	SEX					
	Male	85	11	4	100	(664)
	Female	88	8	4	100	(641)
(d)	EDUCATION					
	No formal education	83	7	10	100	(148)
	Primary	90	5	5	100	(373)
	Lower secondary	90	8	2	100	(222)
	Upper secondary	86	11	3	100	(416)
	Post secondary or above	77	20	3	100	(146)
(e)	OCCUPATION					
	Professional, technical & related workers	83	16	1	100	(81)
	Administrative & managerial workers	71	22	7	100	(45)
	Clerical & related workers	88	11	1	100	(177)
	Sales workers	78	18	4	100	(76)
	Service workers	84	11	5	100	(101)
	Production & related workers, transport equipment operators and labourers	91	6	3	100	(428)
	Housewives	87	7	6	100	(302)
	Students	90	3	7	100	(30)
	Others	83	6	11	100	(64)
(f)	TYPE OF HOUSING					
	Public housing	88	8	4	100	(523)
	Private housing	85	11	4	100	(704)
	Temporary housing	89	4	7	100	(72)

Table 11: Case 2: A policeman saw a person peeping into and tampering with the doors or gates of a number of buildings in a row.

(a): Percentage distribution of respondents by whether the respondents thought the policeman should be able to require the person to identify himself and explain for his conduct (Q. 11a)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know / no comment %	Total %	(No. of respondents)
(a)	OVERALL	97	1	2	100	(1363)
(b)	AGE					
	18 – 29	99	1	0	100	(355)
	30 – 39	98	1	1	100	(489)
	40 – 49	98	*	2	100	(233)
	50 and over	93	1	6	100	(286)
(c)	SEX					
	Male	97	1	2	100	(692)
	Female	97	1	2	100	(671)
(d)	EDUCATION					
	No formal education	90	1	9	100	(167)
	Primary	98	1	1	100	(386)
	Lower secondary	98	0	2	100	(234)
	Upper secondary	99	1	*	100	(424)
	Post secondary or above	95	4	1	100	(152)
(e)	OCCUPATION					
	Professional, technical & related workers	95	5	0	100	(84)
	Administrative & managerial workers	100	0	0	100	(45)
	Clerical & related workers	99	0	1	100	(181)
	Sales workers	99	1	0	100	(79)
	Service workers	94	0	6	100	(107)
	Production & related workers, transport equipment operators and labourers	97	1	2	100	(446)
	Housewives	98	*	2	100	(320)
	Students	100	0	0	100	(30)
	Others	96	0	4	100	(69)
(f)	TYPE OF HOUSING					
	Public housing	97	1	2	100	(547)
	Private housing	98	1	1	100	(731)
	Temporary housing	94	0	6	100	(78)

(Table 11 cont'd)

(b): Percentage distribution of respondents by whether the respondents thought the policeman should be able to arrest the person if he failed to give a satisfactory explanation (Q. 11b)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know / no comment %	Total %	(No. of respondents)
(a)	OVERALL	83	12	5	100	(1325)
(b)	AGE					
	18 – 29	84	13	3	100	(350)
	30 – 39	85	11	4	100	(480)
	40 – 49	83	12	5	100	(228)
	50 and over	81	12	7	100	(267)
(c)	SEX					
	Male	83	13	4	100	(673)
	Female	84	11	5	100	(652)
(d)	EDUCATION					
	No formal education	79	11	10	100	(150)
	Primary	86	9	5	100	(380)
	Lower secondary	87	10	3	100	(230)
	Upper secondary	84	13	3	100	(420)
	Post secondary or above	73	21	6	100	(145)
(e)	OCCUPATION					
	Professional, technical & related workers	79	16	5	100	(80)
	Administrative & managerial workers	76	20	4	100	(45)
	Clerical & related workers	83	16	1	100	(180)
	Sales workers	77	18	5	100	(78)
	Service workers	82	13	5	100	(101)
	Production & related workers, transport equipment operators and labourers	87	8	5	100	(432)
	Housewives	85	11	4	100	(312)
	Students	80	7	13	100	(30)
	Others	77	14	9	100	(66)
(f)	TYPE OF HOUSING					
	Public housing	85	10	5	100	(532)
	Private housing	82	14	4	100	(714)
	Temporary housing	82	10	8	100	(73)

Table 12: Case 3: A policeman saw a person trying the door handles of parked vehicles on the street.

(a): Percentage distribution of respondents by whether the respondents thought the policeman should be able to require the person to identify himself and explain for his conduct (Q. 12a)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a)	OVERALL	95	2	3	100	(1363)
(b)	AGE					
	18 – 29	96	3	1	100	(355)
	30 – 39	96	2	2	100	(489)
	40 – 49	98	1	1	100	(233)
	50 and over	88	3	9	100	(286)
(c)	SEX					
	Male	94	3	3	100	(692)
	Female	95	2	3	100	(671)
(d)	EDUCATION					
	No formal education	88	1	11	100	(167)
	Primary	96	1	3	100	(386)
	Lower secondary	94	3	3	100	(234)
	Upper secondary	97	3	*	100	(424)
	Post secondary or above	95	4	1	100	(152)
(e)	OCCUPATION					
	Professional, technical & related workers	91	8	1	100	(84)
	Administrative & managerial workers	96	4	0	100	(45)
	Clerical & related workers	98	1	1	100	(181)
	Sales workers	95	3	2	100	(79)
	Service workers	94	1	5	100	(107)
	Production & related workers, transport equipment operators and labourers	95	2	3	100	(446)
	Housewives	95	2	3	100	(320)
	Students	100	0	0	100	(30)
	Others	88	4	7	100	(69)
(f)	TYPE OF HOUSING					
	Public housing	95	2	3	100	(547)
	Private housing	96	2	2	100	(731)
	Temporary housing	90	1	9	100	(78)

(Table 12 cont'd)

(b): Percentage distribution of respondents by whether the respondents thought the policeman should be able to arrest the person if he failed to give a satisfactory explanation (Q. 12b)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a)	OVERALL	84	12	4	100	(1293)
(b)	AGE					
	18 – 29	82	15	3	100	(342)
	30 – 39	87	9	4	100	(470)
	40 – 49	82	12	6	100	(229)
	50 and over	82	11	7	100	(252)
(c)	SEX					
	Male	82	13	5	100	(654)
	Female	85	10	5	100	(639)
(d)	EDUCATION					
	No formal education	77	12	11	100	(146)
	Primary	89	7	4	100	(371)
	Lower secondary	84	14	2	100	(220)
	Upper secondary	85	12	3	100	(411)
	Post secondary or above	75	20	5	100	(145)
(e)	OCCUPATION					
	Professional, technical & related workers	78	17	5	100	(76)
	Administrative & managerial workers	79	16	5	100	(43)
	Clerical & related workers	85	13	2	100	(177)
	Sales workers	73	23	4	100	(75)
	Service workers	88	10	2	100	(101)
	Production & related workers, transport equipment operators and labourers	85	11	4	100	(426)
	Housewives	87	7	6	100	(303)
	Students	80	17	3	100	(30)
	Others	79	11	10	100	(61)
(f)	TYPE OF HOUSING					
	Public housing	85	10	5	100	(518)
	Private housing	82	14	4	100	(699)
	Temporary housing	93	6	1	100	(70)

Table 13: Case 4: A policeman saw a man walking to and fro in opposite directions in a street and then following a woman into a building.

(a): Percentage distribution of respondents by whether the respondents thought the policeman should be able to require the person to identify himself and explain for his conduct (Q. 13a)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a)	OVERALL	79	15	6	100	(1363)
(b)	AGE					
	18 – 29	79	16	5	100	(355)
	30 – 39	80	15	4	100	(489)
	40 – 49	78	14	8	100	(233)
	50 and over	76	15	9	100	(286)
(c)	SEX					
	Male	77	17	6	100	(692)
	Female	80	14	6	100	(671)
(d)	EDUCATION					
	No formal education	77	8	15	100	(167)
	Primary	81	12	7	100	(386)
	Lower secondary	80	17	3	100	(234)
	Upper secondary	80	17	3	100	(424)
	Post secondary or above	72	22	6	100	(152)
(e)	OCCUPATION					
	Professional, technical & related workers	69	29	2	100	(84)
	Administrative & Managerial workers	82	16	2	100	(45)
	Clerical & related workers	82	14	4	100	(181)
	Sales workers	77	19	4	100	(79)
	Service workers	73	21	6	100	(107)
	Production & related workers, transport equipment operators and labourers	80	12	8	100	(446)
	Housewives	80	14	6	100	(320)
	Students	73	17	10	100	(30)
	Others	78	15	7	100	(69)
(f)	TYPE OF HOUSING					
	Public housing	79	16	5	100	(547)
	Private housing	79	15	6	100	(731)
	Temporary housing	73	13	14	100	(78)

(Table 13 cont'd)

(b): Percentage distribution of respondents by whether the respondents thought the policeman should be able to arrest the person if he failed to give a satisfactory explanation (Q. 13b)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a)	OVERALL	77	16	7	100	(1074)
(b)	AGE					
	18 – 29	76	20	4	100	(281)
	30 – 39	80	14	6	100	(393)
	40 – 49	76	16	8	100	(182)
	50 and over	77	13	10	100	(218)
(c)	SEX					
	Male	75	18	7	100	(533)
	Female	81	13	6	100	(541)
(d)	EDUCATION					
	No formal education	70	11	19	100	(128)
	Primary	81	13	6	100	(313)
	Lower secondary	80	16	4	100	(187)
	Upper secondary	79	16	5	100	(337)
	Post secondary or above	65	29	6	100	(109)
(e)	OCCUPATION					
	Professional, technical & related workers	76	21	3	100	(58)
	Administrative & managerial workers	70	22	8	100	(37)
	Clerical & related workers	77	18	5	100	(148)
	Sales workers	76	16	8	100	(61)
	Service workers	74	17	9	100	(78)
	Production & related workers, transport equipment operators and labourers	77	17	6	100	(359)
	Housewives	83	9	8	100	(256)
	Students	82	18	0	100	(22)
	Others	70	19	11	100	(54)
(f)	TYPE OF HOUSING					
	Public housing	77	15	8	100	(434)
	Private housing	78	16	6	100	(579)
	Temporary housing	79	16	5	100	(57)

Table 14: Case 5: A policeman saw a person waiting at a bus stop for a long time without boarding any of the buses.

(a): Percentage distribution of respondents by whether the respondents thought the policeman should be able to require the person to identify himself and explain for his conduct (Q. 14a)

	Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a) OVERALL	45	50	5	100	(1363)
(b) AGE					
18 – 29	35	62	3	100	(355)
30 – 39	42	54	4	100	(489)
40 – 49	56	41	3	100	(233)
50 and over	50	38	12	100	(286)
(c) SEX					
Male	46	49	5	100	(692)
Female	43	51	6	100	(671)
(d) EDUCATION					
No formal education	47	35	18	100	(167)
Primary	53	41	6	100	(386)
Lower secondary	50	46	4	100	(234)
Upper secondary	37	62	1	100	(424)
Post secondary or above	34	64	2	100	(152)
(e) OCCUPATION					
Professional, technical & related workers	29	69	2	100	(84)
Administrative & managerial workers	49	51	0	100	(45)
Clerical & related workers	37	62	1	100	(181)
Sales workers	37	54	9	100	(79)
Service workers	51	42	7	100	(107)
Production & related workers, transport equipment operators and labourers	49	46	5	100	(446)
Housewives	48	44	8	100	(320)
Students	13	87	0	100	(30)
Others	48	43	9	100	(69)
(f) TYPE OF HOUSING					
Public housing	43	51	6	100	(547)
Private housing	45	51	4	100	(731)
Temporary housing	54	37	9	100	(78)

(Table 14 cont'd)

(b): Percentage distribution of respondents by whether the respondents thought the policeman should be able to arrest the person if he failed to give a satisfactory explanation (Q. 14b)

		Yes, the policeman should be able to %	No, the policeman should not be able to %	Don't know/ no comment %	Total %	(No. of respondents)
(a)	OVERALL	61	32	7	100	(606)
(b)	AGE					
	18 – 29	53	41	6	100	(125)
	30 – 39	64	29	7	100	(208)
	40 – 49	55	37	8	100	(131)
	50 and over	68	25	7	100	(142)
(c)	SEX					
	Male	59	33	8	100	(318)
	Female	63	31	6	100	(288)
(d)	EDUCATION					
	No formal education	70	22	8	100	(78)
	Primary	64	27	9	100	(203)
	Lower secondary	63	30	7	100	(118)
	Upper secondary	55	40	5	100	(155)
	Post secondary or above	46	52	2	100	(52)
(e)	OCCUPATION					
	Professional, technical & related workers	54	42	4	100	(24)
	Administrative & managerial workers	59	36	5	100	(22)
	Clerical & related workers	45	49	6	100	(66)
	Sales workers	72	28	0	100	(29)
	Service workers	58	36	6	100	(55)
	Production & related workers, transport equipment operators and labourers	61	29	10	100	(217)
	Housewives	66	29	5	100	(155)
	Students	75	25	0	100	(4)
	Others	64	27	9	100	(33)
(f)	TYPE OF HOUSING					
	Public housing	60	31	9	100	(232)
	Private housing	60	35	5	100	(331)
	Temporary housing	69	24	7	100	(42)

Appendix I

Serial No. _____

Respondent Telephone No. _____

Telephone Calls | 1 | 2 | 3 | 4 | 5 |

TELEPHONE SURVEY (8.8.88 – 12.8.88)

QUESTIONNAIRE

INTRODUCTION

Is this telephone number _____?

Good evening! My name is _____, from the City & New Territories Administration. We're conducting a public opinion survey among a large number of households in Hong Kong. Your household has been selected randomly for interview. I appreciate very much your cooperation.

SCREENING QUESTION

THOSE WHO SLEEP IN THE HOUSE FOR AT LEAST FIVE NIGHTS A WEEK

A. First of all, would you please tell me how many members aged 18 – 64 are living in your household?

_____ member aged 18 - 64

3. Would you please list them starting with the eldest one:

LIST H/H MEMBERS AGED 18 TO 64

		Age	Last digit of serial number									
			1	2	3	4	5	6	7	8	9	0
1.	Roughly how old is the eldest	___	1	1	1	1	1	1	1	1	1	1
2.	how old is the next one	___	1	2	1	2	1	2	1	2	1	2
3.	and the next one	___	2	1	3	1	3	1	2	3	2	1
4.	and the next one	___	1	4	2	3	2	2	3	1	4	3
5.	and the next one	___	2	3	5	4	1	3	4	1	2	5
6.	and the next one	___	4	1	6	5	2	4	6	5	3	1
7.	and the next one	___	3	7	4	2	5	1	3	2	6	4
8.	and the next one	___	8	5	3	6	4	6	1	7	5	2
9.	and the next one	___	6	3	1	7	9	5	2	4	7	8
10.	and the next one	___	5	2	8	1	7	0	9	6	4	3

SELECT RESPONDENT FROM TABLE ABOVE & FILL IN Q. C. BEFORE ASKING TO SPEAK TO THE PERSON CHOSEN IF SELECTED RESPONDENT IS NOT AT HOME

C. Thank you! To ensure that our sample is a random one, for the next part of the interview, I would like to talk with the one on the list who is about _____ years old. Is he/she at home?

Can you kindly tell me what is the name of the lady/gentleman and when is she/he expected to be at home?

Name _____ Time at home _____

Questionnaire proper

Introduction: We want to ask you a few questions on the law.
[Please answer them regardless of whether you have knowledge of the law or not.]

Q.1 Do you know whether generally speaking a person can refuse to answer questions put to him by a policeman?

- ☐ 1. Yes, he can refuse
- ☐ 2. No, he can't refuse
- ☐ 3. Don't know

Q.2 Do the police have the general power to stop and search a person acting suspiciously in a public place, and if necessary to arrest him?

- ☐ 1. Yes, have the power
- ☐ 2. No, have no power
- ☐ 3. Don't know

Q.3 Is a policeman allowed by law to arrest a person who loiters in a public place and acts suspiciously?

- ☐ 1. Yes, is allowed
- ☐ 2. No, is not allowed
- ☐ 3. Don't know

Q.4 When such a person is requested by a policeman to identify himself and explain his conduct in a public place, does the person have or not have the right by law to refuse to answer the questions?

- ☐ 1. Yes, has the right
- ☐ 2. No, has no right
- ☐ 3. Don't know

Q.5 If the person fails to give a satisfactory explanation for his conduct to the policeman, has or hasn't he committed an offence?

- ☐ 1. Yes, definitely an offence
- ☐ 2. Yes, probably an offence
- ☐ 3. No, no offence committed
- ☐ 4. Don't know

(Explanation given to respondents by interviews:)

At present the law of loitering is this: a person will be guilty of an offence punishable by imprisonment if he loiters in a public place and acts suspiciously, and when a policeman asks him to give an account of himself and a satisfactory explanation of his conduct, he fails to do so.

Q.6 Do you think, with this law, the incidence of crime can be reduced?

- ☐ 1. Can be
- ☐ 2. Cannot be
- ☐ 3. Don't know / no comment

Q.7 Some people say that "this law compels a person to answer policeman's inquiry in a public place and therefore this infringes his freedom to remain silent". Do you agree or disagree with this saying?

- ☐ 1. Agree
- ☐ 2. Disagree
- ☐ 3. Don't know / no comment

Q.8 Some people say that "this law is too harsh because a person who fails to give a satisfactory explanation to the policeman through shame or panic may be guilty of an offence even though he has in fact a satisfactory explanation". Do you agree or disagree with this saying?

- ☐ 1. Agree
- ☐ 2. Disagree
- ☐ 3. Don't know / no comment

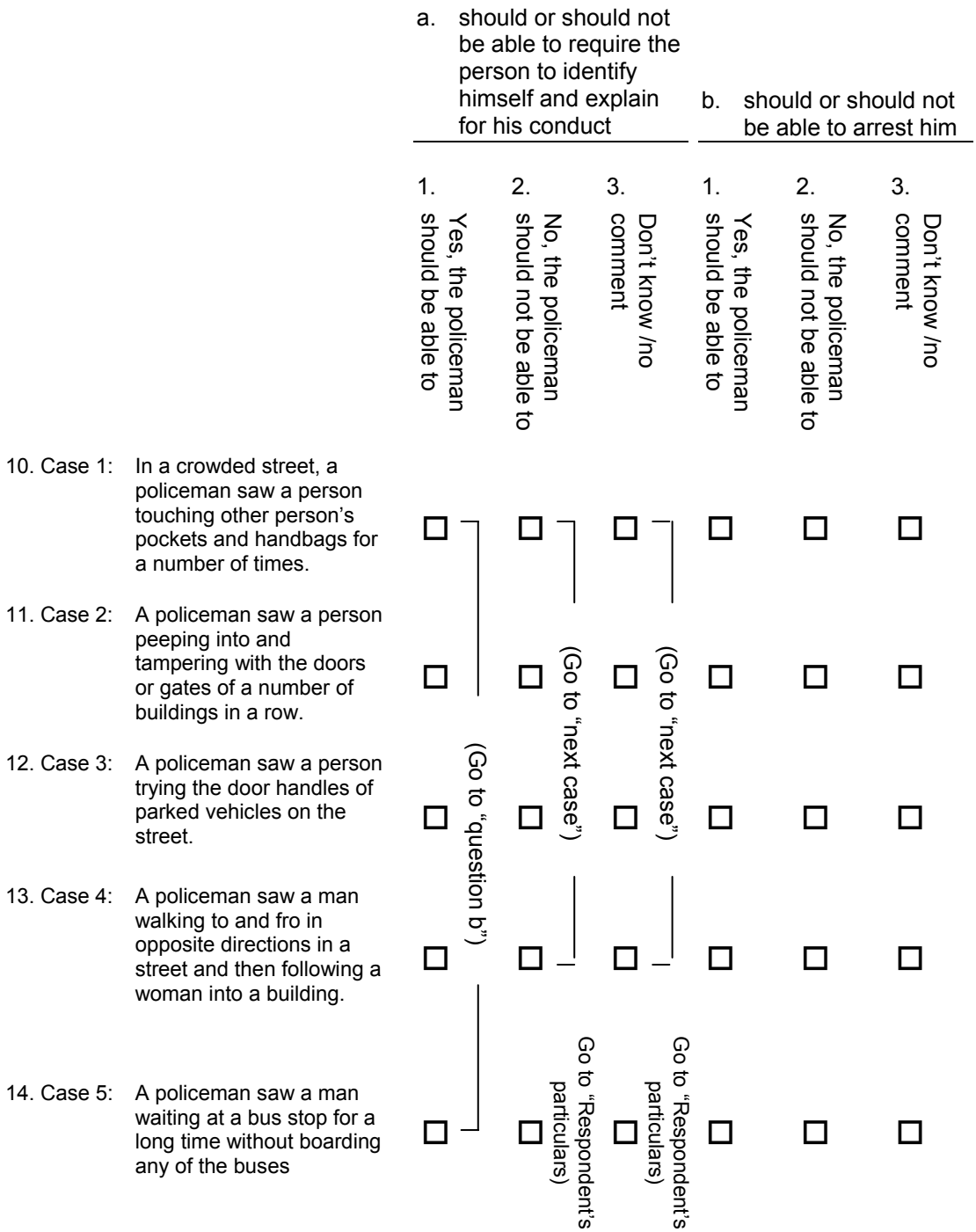
Q.9 This law gives policeman the power to arrest people loitering in public place. Are you worried or not worried that the power given to the policeman might be abused?

- ☐ 1. Worried
- ☐ 2. Not worried
- ☐ 3. Don't know / no comment

Now, will you please tell me your views on the following cases:
(Read to the respondents each case and then ask)

a. Do you think the policeman should be able to require the person to identify himself and explain for his conduct? (if answer "Yes, the policeman should be able to", go to "question b", otherwise, go to "next case")

b. Do you think the policeman should be able to arrest the person if he fails to give a satisfactory explanation?



RESPONDENTS PARTICULARS

Now, for the purpose of analyzing survey results,

A. Have you had any formal education? If yes, up to what level?

- ☐ 1. No formal education (including private tuition)
- ☐ 2. Primary education
- ☐ 3. Lower secondary (F. 1 to 3 or Middle 1 to 3)
- ☐ 4. Upper secondary (F. 4 to 7 or Middle 4 to 6)
- ☐ 5. Post-secondary or above (including polytechnic)

B. What is your occupation? _____

C. What is your monthly income? Is it?

- ☐ 1. Below $1,500
- ☐ 2. $1,500 - $2,999
- ☐ 3. $3,000 - $5,999
- ☐ 4. $6,000 or above
- ☐ 5. No income

D. Are you living in public housing or private housing?

- ☐ 1. Public housing
- ☐ 2. Private housing
- ☐ 3. Temporary housing

E. Which district are you living in? _____

F Would you mind telling me your name for quality control purpose?
_____

G. Code Age of respondent

- 1. ☐ 18 – 19
- 2. ☐ 20 – 24
- 3. ☐ 25 – 29
- 4. ☐ 30 – 34
- 5. ☐ 35 – 39
- 6. ☐ 40 – 44
- 7. ☐ 45 – 49
- 8. ☐ 50 – 54
- 9. ☐ 55 - 64

H. Code Sex of respondent

- 1. ☐ Male
- 2. ☐ Female

Name of interviewer : _____

Date of interview : _____

Appendix II

Comparison of the characteristics of the sample for the present survey with those of the General Household Survey (GHS)

	Present Survey %	GHS# %
AGE		
18 – 19	3	5
20 – 24	9	14
25 – 29	14	16
30 – 34	20	15
35 – 39	16	13
40 – 44	11	9
45 – 49	6	7
50 – 54	8	7
55 – 64	13	14
Total	100	100
SEX		
Male	51	52
Female	49	48
Total	100	100
EDUCATION		
No formal education	12	9
Primary	28	31
Secondary	48	49
Post secondary	11	11
Total	100	100
OCCUPATION		
Professional, technical & related workers	6	5
Administrative & managerial workers	3	2
Clerical & related workers	13	13
Sales workers	6	8
Service workers	8	12
Production & related workers, transport equipment operators & labourers	33	30
Housewives	24	18
Students	2	5
Others	5	7
Total	100	100
TYPE OF HOUSING		
Public	40	40

	Present Survey	GHS#
Private	54	54
Temporary	6	6
Total	100	100

Based on the General Household Survey conducted by the Census & Statistics Department in the 1st quarter of 1988 covering a random sample of 50,000 respondents. For comparison purpose, the figures in this Appendix refer to people aged 18 – 64.

Figures may not add up to 100% because of rounding.

Annexure 2

Survey of Offenders Convicted of Loitering in 1984 and 1987
(Complied by the Force Statistician, RHKF)

Background

To assist the Loitering Sub-committee of Law Reform Commission in reviewing legislation related to loitering offence, the Royal Hong Kong Police Force (RHKPF) has conducted a special survey on offenders convicted of loitering in 1984 and 1987. The aims of the survey are:

(a) to find out the proportion of loitering offenders with non-loitering criminal conviction(s) prior to and subsequent to their loitering convictions, and

(b) to find out the number of prior / subsequent convictions and their seriousness in terms of type of offence.

This paper presents the methodology and results of the survey.

2. The years 1984 and 1987 have been selected for this survey because in terms of statistical information they provide more meaningful statistics than do the intervening years of 1985 and 1986 during which there was a hiatus in police action on loitering cases due to the cases of MA Kui v R (1985) and AG v SHUM Chuen (1986).

Definition

3 Loitering offender. The term refers to an offender who was arrested for and convicted of loitering in 1984 and 1987 other than those sentenced "no conviction recorded" and those deceased whose criminal records cannot be traced.

4. The loitering conviction. An offender might be convicted of loitering more than one time in 1984 or in 1987. For such an offender, the earliest loitering conviction is chosen as the reference to determine prior or subsequent conviction(s). This earliest conviction is called "the loitering conviction".

5. Prior / subsequent conviction. A prior / subsequent conviction refers only to the conviction of a non-loitering crime, i.e. a loitering offender in 1984 who had another loitering conviction in 1985 is treated as "with no subsequent conviction".

Methodology

6. The survey frame was constructed by extracting criminal record numbers of loitering offenders and case reference numbers of convicted loitering cases from the computerized Crime Statistics System maintained by the RHKPF Statistics Office. Making use of criminal record numbers and case reference numbers, 1342 and 659 loitering offenders were identified for 1984 and 1987 respectively. The criminal record of every offender was retrieved and information on the offender's criminal convictions were extracted. Data so collected were then input and processed in computer to produce statistics.

Results of survey

Whether prior / subsequent conviction(s)

7. The following two graphs show the proportion of loitering offenders with conviction records prior to / subsequent to the loitering conviction:

Offenders convicted of loitering in 1984

		with prior conviction: Yes	with prior conviction: No	Sub-total	
with subsequent conviction	Yes	808 (60.2%)	94 (7.0%)	902 (67.2%)	Total = 1342
	No	289 (21.5%)	151 (11.3%)	440 (32.8%)	
	Sub-total	1097 (81.7%)	245 (18.3%)		

Offenders convicted of loitering in 1987 (Amended)

		with prior conviction: Yes	with prior conviction: No	Sub-total	
with subsequent conviction	Yes	171 (25.9%)	11 (1.7%)	182 (27.6%)	Total = 659
	No	353 (53.6%)	124 (18.8%)	477 (72.4%)	
	Sub-total	524 (79.5%)	135 (20.5%)		

8. Nearly 80% of all offenders convicted of loitering in both 1984 and 1987 had criminal record(s) before their loitering conviction. 67.2% of offenders convicted of loitering in 1984 have been re-convicted of other offence(s) since their loitering conviction. Of offenders convicted of loitering in 1987, 27.6% have been re-convicted of other offence(s) since their loitering conviction. The significant difference between the figures for 1984 and 1987 is mainly attributable to the difference in the length of time span since the loitering conviction. The chance of an offender convicted in late 1987 being arrested and convicted during the six month period from his loitering conviction to mid 1988 must be much smaller than the chance of another offender with similar criminal tendency convicted in late 1984 being re-convicted during the $3^1/_2$ year period from his loitering conviction to mid 1988.

No. of prior / subsequent conviction(s)

9. The table below compares the number of prior / subsequent convictions of loitering offenders in 1984 and 1987.

No. of convictions prior to the loitering conviction

No. of convictions	Loitering offenders in 1984	Loitering offenders in 1987
0	245 (18.3%)	135 (20.5%)
1 or more convictions	1097 (81.7%)	524 (79.5%)
3 or more convictions	783 (58.3%)	366 (55.5%)
5 or more convictions	580 (43.2%)	274 (41.6%)
10 or more convictions	299 (22.3%)	148 (22.5%)
20 or more convictions	117 (8.7%)	57 (8.6%)
Total	1342 (100.0%)	659 (100.0%)

No. of convictions subsequent to the loitering conviction

No. of convictions	Loitering offenders in 1984	Loitering offenders in 1987
0	440 (32.8%)	477 (77.4%)
1 or more convictions	902 (67.2%)	182 (27.6%)
3 or more convictions	360 (26.8%)	14 (2.1%)
5 or more convictions	117 (8.7%)	3 (0.5%)
10 or more convictions	10 (0.7%)	1 (0.2%)
20 or more convictions	- (- %)	- (- %)
Total	1342 (100.0%)	659 (100.0%)

10. The above statistics show that about 80% all loitering offenders in 1984 and 1987 had at least one non-loitering conviction before their loitering convictions. More than 50% of both groups of offenders had three or more non-loitering convictions and more than 40% had five or more non-loitering convictions prior to the loitering one.

11. 67.2% of loitering offenders in 1984 had been re-convicted of non-loitering crime since their loitering conviction. 26.8% had three or more non-loitering convictions subsequent to their loitering conviction. The corresponding figures for loitering offenders in 1987 are 27.6% and 2.1%. Readers should bear in mind the problem of different length of time span mentioned in para. 8 above.

Type of offence of prior / subsequent convictions

12. The type of offence of prior / subsequent conviction(s) of the two groups of offenders are shown in the following table. For an offender with more than one convictions, the most serious one, i.e. that with the severest sentence, is chosen for classification.

	Prior conviction(s)		Subsequent conviction(s)	
Type of offence	Loitering offence in 1984	Loitering offence in 1987	Loitering offence in 1984	Loitering offence in 1987
Rape	1	-	2	-
Indecent Assault	4	4	4	2
Murder / Manslaughter	8	1	1	-
Woundings	27	23	9	2
Serious Assaults	37	25	29	4
Assault on Police	5	2	4	2
Criminal Intimidation	6	1	2	-
Robbery	305	165	39	3
Blackmail	31	6	8	1
Burglary	66	28	25	5
Theft / Handling Stolen Goods	228	115	218	36
Taking Conveyance without Authority	8	-	-	1
Assault on Police	5	2	4	2
Criminal Damage	7	3	8	-
Resisting Arrest	5	1	24	-
Sexual Offences	12	9	9	4
Narcotics Offences	201	72	382	75
Gambling Offences	32	9	20	5
Unlawful Society Offences	21	5	3	-
Poss. of Arms / Ammunition	4	-	-	-
Poss. of Offensive Weapon	16	6	10	3

Going Equipped for Stealing	6	3	8	4
Poss. of Instrument for Unlawful Purposes	4	4	20	12
Tampering with Vehicle	-	3	19	9
Unlawful Pawing Offences	4	3	5	2
Unlawful Possession	11	5	13	3
Other Offences	48	31	40	9
No other conviction	245	135	440	477
Total	1342	659	1342	659

Annexure 3

RESPONSES ON LOITERING

A) DISTRICT BOARDS WHOSE VIEWS ON LOITERING WERE RELAYED TO THE SUB-COMMITTEE.

1) Central & Western District Board

2) Eastern District Board

3) Kwun Tong District Board

4) North District Board

5) Sham Shui Po District Board

6) Southern District Board

7) Tsuen Wan District Board

8) Wan Chai District Board

9) Wong Tai Sin District Board

10) Yau Tsim District Board

B) DISTRICT FIGHT CRIME COMMITTEES WHOSE VIEWS ON LOITERING WERE RELAYED TO THE SUB-COMMITTEE.

1) Central & Western District Fight Crime Committee

2) Eastern District Fight Crime Committee

3) Kwun Tong District Fight Crime Committee

4) Mongkok District Fight Crime Committee

5) Sai Kung District Fight Crime Committee

6) Sham Shui Po District Fight Crime Committee

7) Shatin District Fight Crime Committee

8) Southern District Fight Crime Committee

9) Tai Po District Fight Crime Committee

10) Tsuen Wan District Fight Crime Committee

11) Tuen Mun District Fight Crime Committee

12) Wanchai District Fight Crime Committee

13) Wong Tai Sin District Fight Crime Committee

14) Yau Tsim District Fight Crime Committee

15) Group Discussion of 1988 Fight Crime Conference (Group 6)

C) ORGANISATIONS WHICH RESPONDED

1) Association for the Promotion of Public Justice (HK)

2) Central Committee on Youth

3) Hong Kong Bar Association

4) Hong Kong Children & Youth Service

5) Hong Kong Christian Service

6) Hong Kong Council of Social Service

7) Hong Kong Family Welfare Society

8) Hong Kong Federation of Youth Groups

9) Law Society of Hong Kong

10) Law Society Legal Advice and Duty Lawyer Schemes

11) Malcolm Merry, Faculty of Law, University of Hong Kong

12) Po Leung Kuk

13) Shek Wu Hui Merchants Association Ltd

14) Society for the Aid & Rehabilitation of Drug Abusers

15) Society for the Rehabilitation of Offenders, Hong Kong

16) Y W C A Ngau Tau Kok Outreaching Social Work Team

Annexure 4

THE SUB-COMMITTEE PROPOSAL - POLICE LIST OF OFFENCES FAVOURED FOR COVERAGE BY LOITERING OFFENCE

		Penalty	
1.	Theft – S.9, Cap. 210	10 yrs	
2.	Robbery – S.10, Cap. 210	Life	
3.	Burglary – S.11, Cap. 210	14 yrs	
4.	Taking conveyance without authority – S.14, Cap. 210	3 yrs	
5.	Blackmail – S.23, Cap. 210	14 yrs	
6.	Handling stolen goods – S.24, Cap. 210	14 yrs	
7.	Intimidation – S.24, Cap. 200	$2000	2 yrs
8.	Assault – S.25, Cap. 200	$2000	2 yrs
9.	Criminal damage – S.60, Cap. 200	Life/10 yrs	
10.	Rape – S.118, Cap. 200	Life	
11.	Indecent assault – S.122, Cap. 200	5 yrs	
12.	Soliciting for an immoral purpose – S.147, Cap. 200	$1000	6 months
13.	Indecency in public – S.148, Cap. 200	$1000	6 months
14.	Wounding with intent – S.17, Cap. 212	Life	
15.	Inflicting grievous bodily harm – S.19, Cap. 212	3 yrs	
16.	Assault occasioning actual bodily harm – S.39, Cap. 212	3 yrs	
17.	Common assault – S.40, Cap. 212	1 yr	
18.	Sodomy – S.49, Cap. 212	Life	
19.	Gross indecency – S.51, Cap. 212	2 yrs	

Annexure 5

THE SUB-COMMITTEE PROPOSAL - PROPOSED AMENDED SECTION 160(1) OF THE CRIMES ORDINANCE (CAP. 200)

(Prepared for the sub-committee by the Law Draftsman)

160. (1) Any person who loiters in a public place or in the common parts of any building in circumstances that reasonably suggest that his purpose is the commission of an arrestable offence shall, unless he gives to a police officer a satisfactory account of himself and a satisfactory explanation for his presence there, be guilty of an offence and shall be liable on conviction to a fine of $..... and to imprisonment for 6 months.

(1A) In proceedings for an offence under subsection (1) it shall be a defence for the person charged to prove that -

(a) notwithstanding his failure to give a satisfactory account or explanation as provided in subsection (1), a satisfactory account and explanation was available to him; and

(b) his failure to give that satisfactory account or explanation was reasonable in the circumstances.

(1B) Evidence given by a person charged on the hearing of a charge under subsection (1) shall not be admissible against him in any other criminal proceedings except where he is charged with an offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200).

(1C) Nothing in subsection (1) shall render admissible in proceedings for an offence other than under that subsection evidence that would otherwise be inadmissible in those proceedings.

ANALYSIS OF
PROPOSED AMENDMENT OF S.160 CRIMES ORDINANCE (CAP. 200)

Amendment of S.160 Crimes Ordinance (Cap. 200)

	Existing law	Recommended change
1.	S. 160 (1) encompasses all loitering suggestive of a purpose other than an innocent one (Sham Chuen [1986] A.C. 887 at 896E).	The scope of 'loitering' under s. 160 (1) should be limited to conduct which reasonably suggests the purpose of committing an offence for which the sentence is fixed by law, or which carries a sentence of more than 12 months' imprisonment.
2.	S. 160 provides no restriction as to the class of persons competent to require a satisfactory account or explanation from a person perceived to be loitering under suspicious circumstances.	Only police officers should be competent to require an account and explanation from a suspected loiterer.
3.	Reasons for a defendant's failure to give a satisfactory account or explanation at the scene are not strictly relevant to the defence of a charge under existing s.160 (1).	A suspect who, although having a satisfactory account and explanation to give, nevertheless fails to give that account or explanation when asked, should have a 'second chance' to give it at court, provided that his failure to give it at the time was reasonable. The onus of satisfying the court as to the satisfactory account or explanation, and the reasonableness of the failure to give it, should lie with the defendant on the balance of probabilities.
4.	In the light of judicial authority in the UK, answers given by a suspect under threat of arrest for failure to give a satisfactory account or explanation may, despite the dicta of the Privy Council in Sham Chuen (at p. 897C-D), be held admissible in	The derogation in subsection (1) from the usual right to silence should be limited to the offence under that subsection; powers conferred by the subsection to require answers from a suspect should not make admissible against the suspect in relation to

	evidence against the suspect on other criminal charges.	other offences answers that would, under normal rules of voluntariness, be inadmissible.
5.	Generally speaking, no protection attaches to evidence given in court by a defendant as regards the use of that evidence against him on other charges	A defendant should not be inhibited in availing himself of the proposed ‘second chance’ defence out of fear that his explanation given in court may be used against him on another charge.