

LCQ 13: Persons remanded in custody

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 8):

Question:

It is learnt that as the Lai Chi Kok Reception Centre and the Tai Lam Centre for Women are often full, from time to time male and female persons on remand pending trial need to be transferred to other correctional institutions (e.g. the Stanley Prison). In this regard, will the Government inform this Council, in each of the past five years:

(1) of the average and maximum length of time for which persons pending trial were held on remand; and

(2) of the number of persons on remand pending trial who were transferred from the aforesaid centres to another correctional institution because the former were full?

Reply:

President,

The Government's consolidated response to the two parts of the Hon Kwok's question, based on information gathered from relevant departments, is as follows:

(1) The Correctional Services Department (CSD) is responsible for, inter alia, the operation of correctional institutions for the custody of offenders sentenced to imprisonment by the court and persons ordered by the court to be held on remand pending trial. It does not maintain statistics on the average and maximum length of time for which persons pending trial were held on remand in the past five years.

Under section 9D(1) of the Criminal Procedure Ordinance (Cap. 221), a defendant is entitled to be admitted to bail pending trial. A defendant may be refused bail if, as provided under section 9G(1) of Cap. 221, it appears to the court that there are substantial grounds for believing that the defendant would:

- (a) fail to surrender to custody as the court may appoint; or
- (b) commit an offence while on bail; or
- (c) interfere with a witness or pervert or obstruct the course of justice.

In deciding whether or not to refuse bail, the court may have regard to the following factors, as set out in section 9G(2) of Cap. 221:

- (a) the nature and seriousness of the alleged offence and, in the event of conviction, the manner in which the accused person is likely to be dealt with;
- (b) the behaviour, demeanour and conduct of the accused person;
- (c) the background, associations, employment, occupation, home environment, community ties and financial position of the accused person;
- (d) the health, physical and mental condition and age of the accused person;
- (e) the history of any previous admissions to bail of the accused person;
- (f) the character, antecedents and previous convictions, if any, of the accused person;
- (g) the nature and weight of the evidence of the commission of the alleged offence by the accused person;
- (h) any other thing that appears to the court to be relevant.

(2) CSD is committed to providing a secure, safe, humane, decent and healthy custodial environment for persons in custody (PICs) in all correctional institutions.

Generally, CSD detains adult males and females on remand at Lai Chi Kok Reception Centre (LCKRC) and Tai Lam Centre for Women (TLCW) respectively. In order to alleviate the occasional overcrowding situation in these institutions, since August 2016, some male remand PICs were transferred from LCKRC to Stanley Prison, while since January 2017, some female remand PICs were transferred from TLCW to Lo Wu Correctional Institution (LWCI). The numbers of male and female remand PICs transferred to Stanley Prison and LWCI respectively as at the end of the past three years (i.e. 2016 to 2018) are tabulated below:

Year (As at December 31)	Number of male remand PICs in Stanley Prison transferred from LCKRC	Number of female remand PICs in LWCI transferred from TLCW
2016	201	—
2017	227	52
2018	335	79

CSD will continue its efforts to deploy resources flexibly having regard to the changing penal population, and plan and implement various measures to improve and upgrade ageing facilities (including redeveloping relevant correctional facilities to increase the capacity as necessary).

LCQ20: Acts relating to clandestine

photography

Following is a question by the Dr Hon Elizabeth Quat and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 8):

Question:

Last month, the Court of Final Appeal handed down a judgment on an appeal case, ruling that as the acts of the respondents clandestinely taking photographs of interview questions with their own mobile phones and divulging them to other people had not involved access to another person's computer, the respondents had not committed the offence under section 161(1)(c) of the Crimes Ordinance (Cap. 200) (i.e. the offence of obtaining access to a computer with a view to dishonest gain for himself or another person). In this connection, will the Government inform this Council:

(1) as the Government indicated, subsequent to the handling down of the aforesaid judgment, that the Police were discussing with the Department of Justice ways to deal with nine other cases of a similar nature, of the details of those cases and the approach for dealing with them;

(2) as there are comments that following the handing down of the aforesaid judgment, it will be difficult for the Police to invoke any legislation to institute prosecutions against those persons who take photographs clandestinely with their own mobile phones in a private place, of the Government's measures to curb such acts before any legislation is enacted to plug the loophole;

(3) as the Review of Sexual Offences Subcommittee of the Law Reform Commission proposed the creation of a new offence of voyeurism and conducted public consultation on the proposal in May last year, whether the Government will immediately commence the relevant legislative procedure; if so, of the details and the timetable; if not, the reasons for that;

(4) whether it will immediately conduct a study on enacting legislation against acts of clandestine photo-taking of confidential documents or information; if so, of the details and the timetable; if not, the reasons for that; and

(5) given that at present, the non-compliance of a data user with the Data Protection Principles stipulated in the Personal Data (Privacy) Ordinance (Cap. 486) does not directly constitute a criminal offence, and the data user commits a criminal offence only if he or she contravenes an enforcement notice served on him or her by the Privacy Commissioner for Personal Data in connection with such non-compliance, and that the offence only carries a maximum fine of \$50,000 and an imprisonment of two years, whether the Government will amend Cap. 486 to enhance the deterrent effects against acts of privacy intrusion such as clandestine photo-taking; if so, of the details;

if not, the reasons for that?

Reply:

President,

Section 161 of the Crimes Ordinance (CO) (Cap. 200) on "access to computer with criminal or dishonest intent" stipulates that any person who obtains access to a computer:

- (a) with intent to commit an offence;
- (b) with a dishonest intent to deceive;
- (c) with a view to dishonest gain for himself or another; or
- (d) with a dishonest intent to cause loss to another,

whether on the same occasion as he obtains such access or on any future occasion, commits an offence.

The above provision aims at combating acts of "access to computer with criminal or dishonest intent", such as technology crimes like illegal access to a computer system. The maximum penalty is five-year imprisonment on conviction upon indictment.

On April 4, 2019, the Court of Final Appeal (CFA) held in *Secretary for Justice v CHENG Ka Yee & 3 Others* [2019] HKCFA 9 that the text, context, and purpose of section 161(1)(c) of CO pointed towards construing the provision so that it does not extend to the use of the offender's own computer. In other words, on its proper construction, section 161(1)(c) of CO does not apply to the use by a person of the person's own computer, not involving access to another's computer.

The Government respects CFA's ruling. The judgment helps clarify the relevant statutory provisions and legal viewpoints. Having consulted the Constitutional and Mainland Affairs Bureau, the Department of Justice (DoJ) and the Secretariat of the Law Reform Commission (LRC), our reply to the various parts of the question is as follows:

(1) & (2) As at April 30 this year, the Police had eight cases related to the offence of "access to computer with criminal or dishonest intent" under section 161 of CO pending handling. As regards the other case, the charge has already been amended to the offence under the Hospital Authority Bylaws concerning the taking photograph of a patient in a hospital without consent, and legal proceedings are still on-going. The Police will continue to maintain close liaison with DoJ to ensure that the relevant cases are handled appropriately, such as examining whether to proceed with prosecution with the charge of "access to computer with criminal or dishonest intent" in light of the circumstances of individual cases, or considering the feasibility of laying alternative charge(s).

Given that the facts of every case are different, there is no hard-and-fast rule on how to handle the relevant cases. In considering each case, DoJ

will make relevant prosecutorial decisions based on the actual facts, evidence, applicable law and the Prosecution Code. Most legislation targeting the real world (such as theft, deception, etc.) also applies to crimes committed through the Internet or by means of technology. Focusing on obtaining access to a computer with criminal or dishonest intent, section 161 of CO remains effective against unlawful acts such as illegal computer intrusion and obtaining access to another's computer for committing other offence(s).

We understand the public's concern about acts such as clandestine upskirt-photography. Depending on the actual circumstances and evidence of the case, the acts may constitute the offence of "loitering" under section 160 of CO (Cap. 200) with a maximum penalty of imprisonment for 2 years; "disorder in public places" under section 17B of the Public Order Ordinance (Cap. 245) with a maximum penalty of a fine at level 2 and imprisonment for 12 months; or "outraging public decency" under the common law with a maximum penalty of imprisonment for seven years.

If the photo-taking activities involve "personal data" as defined in the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486), and the collection or handling of such personal data contravenes the data protection principles as set out in Schedule 1 to PDPO, the Privacy Commissioner for Personal Data (PCPD) may issue an enforcement notice to relevant persons. A person who contravenes an enforcement notice will, on first conviction, be liable to a maximum penalty of a fine at level 5 and imprisonment for two years plus a daily fine.

(3) & (4) With regard to the impacts brought about by CFA's judgment handed down on April 4, 2019 in respect of section 161 of CO, the Security Bureau (SB) is looking into the judgment with relevant departments and proactively examining the legislative amendment on the crime concerned, with a view to introducing the relevant legislative proposal as soon as possible.

In that regard, in respect of the offence of voyeurism, LRC released a report on "Voyeurism and Non-consensual Upskirt-photography" on April 30 recommending the introduction of a new and specific offence of voyeurism to deal with acts of non-consensual observation or visual recording of another person for a sexual purpose; and a new and specific offence in respect of non-consensual upskirt-photography. SB welcomes LRC's recommendations and will carefully study and follow up the report. We suggest discussing with the Panel in July, to be followed by a consultation, with a view to introducing a bill for the Legislative Council's scrutiny as soon as possible.

On the other hand, in light of the rapid development associated with information technology, computer and the Internet, coupled with the potential for them to be exploited for carrying out criminal activities, an LRC sub-committee commenced its study on the topic of cybercrime in January this year. SB will continue to closely monitor the progress of the study.

(5) Given the rapid development in information technology and online communications, technological advancement has brought new challenges to the

protection of personal data privacy. The Government is highly concerned about how to improve the regulation on personal data and maintains an open mind on amending and improving the PDPO. Currently, the Constitutional and Mainland Affairs Bureau, jointly with the Office of PCPD, has commenced reviewing the relevant regulations and penalties of PDPO, including studying issues such as the establishment of a mandatory data breach notification mechanism, retention period of personal data and regulation of data processors. Having regard to the findings of the Office of PCPD's investigation on recent personal data breaches and its recommendations, the Government will decide how the PDPO should be improved to enable the Office of PCPD to effectively strengthen the regulation on protection of personal data.

LCQ18: Monitoring quality of major public works projects

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (May 8):

Question:

It has been reported that since the commissioning of the Hong Kong Velodrome (HKV) which was built at a cost of \$1.1 billion, a total of 234 water seepage incidents have occurred in the HKV. Recently when the amber rainstorm signal was in force, there was even a serious accumulation of water in the HKV, which was caused by the automatic opening of the roof windows due to malfunctioning of the fire alarm system. Bemoaning the damage caused to the cycling track in the HKV, a local athlete, who is a winner in the Track Cycling World Championship, posted a message on the Internet that she personally mopped dry the water spots on the cycling track. Responses of members of the public on the Internet and the media have both expressed dissatisfaction with the water seepage incidents. In addition, enhancement works were needed to be carried out at The Grand Theatre of the Xiqu Centre, which was built at a cost of \$2.7 billion but had a utilisation rate of merely 31 per cent, just three months after its opening. Besides, the Central-Wan Chai Bypass (the Bypass) is installed with three sets of air purification system claiming to be the world's largest system which can filter 80 per cent of respirable suspended particulates and nitrogen dioxide from vehicle exhaust. Nevertheless, just several days after the commissioning of the Bypass, the operation of seven out of the 15 fans installed in the air purification system of the East Ventilation Building were suspended due to damage. Some commentators on current affairs have pointed out that various types of quality problems have emerged in major public works projects in recent years on which the Government had spent substantial amounts of public money, and members of the public are in fact "paying money to buy

sufferings". In this connection, will the Government inform this Council:

(1) whether it has assessed (i) the negative impacts on the Government's image caused, and (ii) if there has been a blow to the confidence of members of the public in the Government's governance ability and proper use of public money, by the successive emergence of quality problems in the aforesaid public works projects; if it has assessed, of the outcome; if it has not assessed, the reasons for that;

(2) as the Chief Secretary for Administration has recently said that the total infrastructure investments in transport, hospitals, housing developments, etc. in the coming decade are estimated to exceed \$1,000 billion, of the Government's new policies and measures to strengthen its monitoring and control of works projects and to enhance its efforts in holding the government officials in charge of works projects accountable for the projects, so as to avoid recurrence of quality problems in works projects; and

(3) whether it has reviewed if the Project Strategy and Governance Office is sufficiently empowered and staffed to monitor the costs and quality of the aforesaid works projects which will cost more than \$1,000 billion?

Reply:

President,

The Government has been implementing public works in a moderate and orderly manner to enhance people's quality of living, so as to sustain Hong Kong's long-term competitiveness and promote Hong Kong's economic development. In the next few years, the annual capital works investment is expected to rise to over \$100 billion, including projects such as the Central Kowloon Route and the Hospital Development Plan, while the annual total construction output will increase to over \$300 billion. In addition to this substantial workload, we are facing the challenges of extremely high construction cost and ageing construction work force. To tackle these challenges, we have been working hard on promoting relevant strategies to uplift the construction industry's delivery capacity, improving overall productivity as well as ensuring the works quality for smooth implementation of public works projects.

Our responses to the three parts of the question raised by the Hon Tse are as follows:

(1) We have in place a well-established and very effective works quality supervision system for public works projects. According to the World Economic Forum, Hong Kong is ranked number two in infrastructure. We also understand the public's concern about the performance and quality of public works. As announced in the 2019-20 Budget, in order to boost the overall productivity, quality, safety and environmental performance of the industry, we will lead the construction industry in implementing "Construction 2.0" by advocating innovation, professionalisation and revitalisation to ensure the quality of

public works by enhancing the performance of the industry. We are now deepening various measures in "Construction 2.0" for implementation as early as possible to meet the public's expectations for the performance of public works projects. As regards the cases mentioned by the Hon Tse, we understand that the relevant departments have already taken appropriate follow-up actions.

(2) At the moment, we are upgrading the Project Cost Management Office and will rename it the Project Strategy and Governance Office (PSGO) for implementing strategic initiatives and enhancing capabilities in cost surveillance and project governance. We will adopt a holistic approach to strengthen cost management and uplift the performance of public works projects by implementing major initiatives along the following directions:

- (i) strengthening the existing gateway process for cost management;
- (ii) enhancing project delivery capabilities;
- (iii) leading strategic developments to enhance productivity and cost-effectiveness; and
- (iv) enhancing collaboration with international counterparts and local industry stakeholders.

Besides, to enhance project delivery capabilities, the Government will establish the Centre of Excellence for Major Project Leaders (CoE) to instill in relevant public officers a more innovative mindset and equip them with enhanced leadership skills for delivering public works projects. We have earmarked \$40 million for the first three years of the CoE's operations for around 150 to 200 directorate officers in relevant bureaux and departments. The CoE will start the programme in mid-2019.

The Financial Secretary has mentioned in the 2019-20 Budget Speech that in order to ensure the performance of public works supervision, we will promote digitisation of the supervision system. Pilot projects will be launched to motivate site supervisors and contractors to use innovative technology to collect real-time data on site environment and works progress for record, monitoring and analysis purposes. We have set up a task force to plan and co-ordinate inter-departmental work in this regard.

(3) The PSGO will be a multi-disciplinary office dedicated to enhancing the performance of public works projects. It is headed by a Principal Government Engineer, who will be assisted by a Government Engineer, a Chief Engineer and ten non-directorate professional staff of various professional grades, such as Architect, Engineer, and Quantity Surveyor. We are now seeking the Finance Committee of Legislative Council's approval for the respective directorate grade posts. After the establishment of the PSGO, we will review the project strategy and resources of the PSGO from time to time to ensure sufficient staff and resources are in place to cope with the workload.

Hong Kong Customs combats cross-boundary counterfeit goods activities (with photo)

Hong Kong Customs conducted an operation between January and April to combat cross-boundary counterfeit goods destined for the United States. A total of about 55 000 suspected counterfeit goods with an estimated market value of about \$7 million were seized.

Hong Kong Customs has been working closely with the US Customs and Border Protection using intelligence exchanges, and took targeted enforcement action between January and April including stepped up inspection of suspicious express courier parcels destined for the United States.

During the operation, Hong Kong Customs seized a total of about 55 000 suspected counterfeit goods including mobile phone accessories, clothing, leather goods and footwear, effectively curbing cross-boundary counterfeit goods activities.

Hong Kong Customs will continue working closely with overseas law enforcement agencies to combat cross-boundary counterfeiting activities through intelligence exchanges and joint enforcement actions.

Under the Trade Descriptions Ordinance, any person who imports or exports any goods to which a forged trade mark is applied commits an offence. The maximum penalty upon conviction is a fine of \$500,000 and imprisonment for five years.

Members of the public may report any suspected counterfeiting activities to Customs' 24-hour hotline 2545 6182 or its dedicated crime-reporting email account (crimereport@customs.gov.hk).



Fraudulent website related to Bank of China (Hong Kong) Limited

The following is issued on behalf of the Hong Kong Monetary Authority:

The Hong Kong Monetary Authority (HKMA) wishes to alert members of the public to a press release issued by Bank of China (Hong Kong) Limited on fraudulent website, which has been reported to the HKMA. Hyperlink to the press release is available on the [HKMA website](#) for ease of reference by members of the public.

Anyone who has provided his or her personal information to the website concerned or has conducted any financial transactions through the website should contact the bank concerned using the contact information provided in the press release, and report to the Police or contact the Cyber Security and Technology Crime Bureau of the Hong Kong Police Force at 2860 5012.