

News of Against Child Abuse

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【Bystanders face up to 20 years' jail for failing to report child abuse under proposed law change in Hong Kong】

Bystanders face up to 20 years' jail for failing to report child abuse under proposed law change in Hong Kong

- Law Reform Commission says offence should cover everyone who has a duty of care to victim, including family members, helpers, social workers and teachers
- Body says proposed offence will deal with situation where all accused parties are acquitted because it cannot be proven which one is directly responsible



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The proposed offence covers everyone who has a duty of care to a child.

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Bystanders face up to 20 years in prison if they fail to protect children or other vulnerable people from death or serious harm under a new offence proposed by Hong Kong's Law Reform Commission to close a legal loophole when perpetrators of abuse are difficult to identify.

In a report released on Friday, the government-appointed commission recommended the offence cover everyone who has a duty of care to a victim, including members of the same household, relatives, domestic helpers, social workers, care home staff, health care workers, teachers, and police and prison officers.



(From left) Law Reform Commission secretary Adeline Wan, member Stephen Hung, Amanda Whitfort, Philip Beh and subcommittee secretary Louisa Ng unveil the report. Photo: K. Y. Cheng

The offence would apply to serious physical injury or psychological harm, including from sexual assault, inflicted upon a child or vulnerable adult, such as the elderly and people with disabilities, in their care.

According to the commission, the change was needed to deal with a situation where all accused parties were acquitted because it could not be proven which one was directly responsible, with the suspects and family members keeping silent while the victims could not speak for themselves.

“It closes the current evidential loophole, which creates problems where the prosecution cannot identify the perpetrator of the abuse. Our proposed offence does not require the prosecution to establish who inflicted the abuse,” said Amanda Whitfort, chairwoman of a commission subcommittee on the subject.

“This is simply a matter of saying that if we cannot find the perpetrator, the one who inflicted the blow, we would now also be able to prosecute those who knew about it, stood by and did nothing.”

Those with victims under their care would be expected to take “reasonable steps” to protect them if they were aware abuse was taking place.

But any judgment of what constituted a reasonable step would take into account the defendant’s personal situation such as age, whether he or she suffered from a physical disability or mental illness and whether the individual was subject to domestic violence or duress.

If the accused was a domestic helper, imbalance of power with the employer would be considered.

Making an anonymous report to law enforcement could be regarded as a reasonable step, according to Whitford.

The commission recommended that an offender be jailed for up to 15 years if their failure resulted in serious harm to the victim, including being left in a permanent vegetative state, and up to 20 years if it resulted in death. The severity of the penalty reflected the gravity of the crime, Whitford said.

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Commission member Philip Beh

The commission first published a consultation paper in May 2019 recommending the offence and put renewed pressure on the government to move quickly to stem child-abuse arising from carers’ failure to intervene, which in many cases contributed to the victim’s prolonged suffering.

In one shocking case, a five-year-old girl died in 2018 after she was repeatedly abused by her father and stepmother, while her eight-year-old brother suffered more than 100 injuries.

Public anger was directed not only at the parents, who were jailed for life, but also the child’s kindergarten and school, as many believed the girl’s death could have been prevented had people in positions of authority intervened earlier.

Former director of public prosecutions Grenville Cross called on the government to endorse the report and expedite the necessary legislation, saying children in perilous situations had suffered for too long.

Donna Wong Chui-ling, director of the charity Against Child Abuse, said the commission's recommendation could prompt early prevention and intervention before tragedies happened.

A kindergarten principal who declined to be named said the 20-year maximum sentence would act as a deterrent, but which situations would constitute an offence needed to be more clearly explained. What would be the role of school management, she asked.

Grace Li Fai, an executive committee member of the Elderly Services Association of Hong Kong, opposed including the elderly in the proposal. She said abuse cases in care homes for the elderly were rare and gathering evidence to prove harm was difficult.

The chairwoman of the International Migrants Alliance, Eni Lestari, also expressed concerns that given domestic helpers were dependent on the parents of a child for employment, they might fear being fired if they alerted authorities about abuse. The government needed to put guarantees in place to protect helpers and allow them to switch to a new employer if they made a report.

But commission member Philip Beh Swan-lip dismissed the concerns.

"We understand there are concerns from frontline workers, but they simply have to report any suspected abuse cases once they find out and they will have discharged their responsibility," he said.

The Labour and Welfare Bureau said the government would "examine and consider the recommendations of the report carefully".

In the first three months of this year, 279 cases of child abuse were recorded, according to the Social Welfare Department, up from 166 in the same period last year, with girls usually the victim.

Physical abuse accounted for 113 cases, sexual assault for 86, neglect for 67, and psychological abuse for three. Ten cases involved multiple forms of abuse.

The department received 940 reports of child abuse last year, with 57 per cent involving girls.

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<https://www.scmp.com/news/hong-kong/law-and-crime/article/3148332/bystanders-face-20-years-jail-failing-report-child>