

為被扣留在警署人士 提供法律諮詢服務

Provision of Legal Advice Services for Persons Detained in Police Stations



本局轄下的法律援助範圍興趣小組（「興趣小組」）曾就法律支援的涵蓋範圍應否擴大至包括被香港執法機構扣留的人士進行研究。在研究進行期間，興趣小組曾與相關持分者會面，包括兩個法律專業團體、法律援助署、當值律師服務和各執法機構。根據研究結果和建議，本局於2016年2月向政府提交意見書。

本局在意見書中建議設立一個由公帑資助的計劃，為被扣留人士一旦在其個人自由受到限制時，提供有關權益的法律意見。有關計劃應以試驗形式推行，並分階段落實和不時作出檢討。開始時，試驗計劃可先在四間具代表性的警署試行，為期不多於兩年。計劃試行一年和兩年後，應分別進行中期檢討和全面檢討。本局認為，透過單一或一系列循序漸進的試驗計劃，可以找出有關程序或財務方面可能出現的問題，然後透過進一步商議尋求解決方案。因應檢討的結果，本局認為可把有關服務擴展至其他警署和執法機構。

試驗計劃的主要特點概述如下：

LASC's Interest Group on Scope of Legal Aid of LASC has conducted a study on whether legal assistance should be extended to cover persons detained by law enforcement agencies in Hong Kong. When conducting the study, the Interest Group met with relevant stakeholders, including the two legal professional bodies, Legal Aid Department, Duty Lawyer Service (DLS) and law enforcement agencies. Based on the findings and recommendations of the study, the Council made a submission to the Government in February 2016.

In the submission, the Council recommended that a publicly funded scheme be set up to provide detainees with legal advice on their rights as soon as their liberty is restricted. The scheme should be introduced on a pilot basis, implemented in stages and kept under review. As a start, four representative police stations may be identified at which the pilot scheme should be tried out for up to two years. An interim review after the first year and a comprehensive review after the second year were also recommended. The Council considered that any possible logistic or financial concerns could best be tested out in a single or a series of progressive pilot schemes so that relevant issues could be identified and resolved through further discussions. Subject to the outcome of the reviews, the Council was of the opinion that the service might be extended to other police stations and law enforcement agencies.

The key features of the proposed pilot scheme are summarized below –

- (a) 該計劃應適用於某個別人士被扣留的期間（即其個人自由在警署內受到限制時），但不應包括在該名人士被正式落案起訴後的時段（即「警署至出庭間」的時段）。因為，一般在被落案起訴後，該名人士很快便會被安排出庭。當案件轉介至裁判法院後，當值律師服務便會向該名人士提供法律意見和支援；
- (b) 本局雖沒有就提供法律意見服務應否受時間限制作出確實的建議，但主流意見均認為向被扣留人士提供的服務不應超逾一小時。負責提供服務的律師應根據其專業判斷決定每個個案所需時間，對於一些涉及嚴重罪行的個案或在特殊情況下，例如被扣留人士對理解法律意見有困難時，該律師可延長服務的時限；
- (c) 由於面對面的對話可使律師更準確地引導和明白被扣留人士的憂慮和需要，有關計劃應包括安排律師親自前往警署為被扣留人士提供法律意見；
- (d) 為令被扣留人士迅速地得到法律支援，律師可透過電話提供初步法律意見；
- (e) 可設立一個電話服務中心，由具備處理刑事案件經驗的律師（「中心律師」）負責支援，透過電話向被扣留人士提供初步法律意見。中心律師可在有需要的情況下，聯絡值勤律師（即在預先核准的合資格律師名冊上的律師）前往警署與被扣留人士會面；以及



- (a) the scheme should cover the period when the individual is detained (i.e. as soon as his liberty is restricted in a police station) but should no longer be applicable after a charge has been laid (i.e. during the “police station to court” period). It is because the time gap between charge and appearance before the Magistrate is usually very short. The DLS would provide legal advice and assistance once the matter has been referred to the Magistrates’ Court;
- (b) the Council has not made a firm recommendation on whether an initial conference and advice should be limited and, if so, to what extent. The majority view was that the time of service provided to a detainee should not last for more than one hour. Attending lawyers should use their professional judgement to decide how much time should be spent on each case and may extend the service beyond the time limit in cases involving serious offences or special circumstances e.g. where the detainee has difficulty in understanding the advice;
- (c) the scheme should cover a lawyer’s attendance at the police station to give legal advice to the detainee in person because face-to-face contact will enable the lawyer to better elicit and understand the detainee’s concerns and needs;
- (d) to enable quick legal assistance, initial advice may be provided over the telephone;

- (f) 首次提供法律意見的服務應屬免費和毋須受經濟審查。倘被扣留人士有後續面談的需要，他／她須通過類似當值律師計劃所採用的經濟審查，並繳付500元至1,000元的分擔費。

政府相關的政策局和部門在收到本局的建議後，已開始研究建議的可行性。在2017年7月，民政事務局向立法會司法及法律事務委員會（「事務委員會」）報告有關本局的建議，並表示在完成內部審議後，將再次向事務委員會作出報告，並建議未來的路向。

本局在2017年8月舉行的會議上，扼要討論了事務委員會所表達的意見，並注意到有關方面關注建議的服務或會對資源和營運造成影響，但本局相信可能出現的困難／問題應與目前提供類似服務的國家所面對的大致相同。在英國，有一個特別為協助提供法律意見給被扣留在警署人士而設的流動應用程式正在開發，被扣留人士只需用一部平板電腦啟動該流動應用程式，便可輕易取得有關法律權益的資訊。另外，一項探討律師以流動應用程式（例如使用Skype）聯繫在囚人士的可行性研究即將展開。通過這個方式，律師不必親自到警署與被扣留人士面談，也可提供法律意見，同時有關方面毋須為面談所需的額外空間而擔憂。本局認為當推行向被扣留在警署人士提供法律意見的試驗計劃時，香港可參考相關的海外經驗。

本局很高興政府已開始研究此項建議的可行性，並期望有關的試驗計劃儘快落實推行。

- (e) a call centre, supported by lawyers with experience in criminal practice (“Centre Lawyers”), may be set up to provide initial telephone advice to detainees. The Centre Lawyer may contact lawyers on duty (i.e. lawyers on a pre-approved panel of eligible lawyers) to meet detainees in police stations as necessary; and
- (f) the initial legal advice session should be free of charge and non means tested. Subsequent visits to a detainee, if any, should be subject to a means test similar to the Duty Lawyer Scheme and a contribution in the range of \$500 to \$1,000 payable by the detainee.

After receiving the Council’s recommendations, relevant government bureaux and departments have been examining the feasibility. In July 2017, the Home Affairs Bureau reported the recommendations to the Legislative Council Panel on Administration of Justice and Legal Services. They informed the AJLS Panel that on completion of the internal deliberations, they would report back to the AJLS Panel on the recommended way forward.

Views expressed at the AJLS Panel meeting were briefly discussed at the Council’s meeting held in August 2017. Concerns over possible resources and operational implications were noted. However, the Council believes that any difficulties/problems that may arise should be common to countries currently providing similar services. In the UK, an App is being developed to facilitate providing legal advice to persons detained in police stations. With a tablet and the App, detainees can easily access information on their legal rights. A study will be conducted to examine the feasibility for lawyers to contact their clients in custody by using Skype, for instance. In this way, lawyers can provide legal advice services without going to police stations to speak to detainees in person. Additional space required for interviews would no longer be a concern. The Council considers that Hong Kong may refer to the relevant overseas experience when implementing the pilot scheme for providing legal advice to persons detained in police stations.

The Council is glad to see that the Government has started examining the feasibility of the proposal and looks forward to seeing its speedy implementation.